REPORT ON THE REVIEW OF THE POLICE COMPLAINT PROCESS IN BRITISH COLUMBIA

Josiah Wood, Q.C.
February 2007

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BACKGROUNDER

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Feb. 7, 2007

Ministry of Public Safety and Solicitor General

REPORT ON THE REVIEW OF THE POLICE COMPLAINT PROCESS IN BRITISH COLUMBIA (WOOD REPORT)

About the review:

Joe Wood, retired BC Supreme Court and BC Court of Appeal Justice, was appointed by the Ministry of Public Safety and Solicitor General in August 2005 to chair the review.

The scope of the review included all independent municipal police departments (Abbotsford, Central Saanich, Delta, Nelson, New Westminster, Oak Bay, Port Moody, Saanich, Vancouver, Victoria and West Vancouver).

Three key aspects of the existing police complaint process were examined, including: (1) The adequacy of the existing complaint process, including implications for amending the current legal framework (Part 9 of the Police Act); (2) The conduct of police complaint investigations by independent municipal police departments; and (3) Confidence in and satisfaction with the existing process.

Review methodology included:

- Administrative audit of a sample of approximately 300 complaint files;
- Investigative audit of the same sample of complaint files;
- Approximately 150 interviews (with persons involved in the process including chiefs, internal investigators, police board members, members of special interest groups, complainants, and respondent police officers, among others);
- E-mail survey of all sworn municipal police officers;
- Telephone survey of 1,024 members of the communities policed by independent municipal forces;
- Survey of marginalized persons and service providers in core urban areas (i.e., Vancouver, Victoria and New Westminster); and
- Analysis of key documents and literature review.

An advisory stakeholder committee was established at the beginning of the process. The committee provided input on the review project plan and was also consulted with respect to the recommendations stemming from the review. Membership on the advisory stakeholder committee included representatives from the British Columbia Association of Municipal Chiefs of Police, British Columbia Association of Police Boards, BC Federation of Police Officers, Vancouver Police Union, Vancouver Police Officers Association, Office of the Police Complaint Commissioner, British Columbia Civil Liberties Association and Pivot Legal Society.

Key findings:

Wood's overall finding was that the majority of audited complaints were investigated and concluded in a manner that was both reasonable and appropriate. However, he determined that approximately one in five complaints were not handled as well as they could have been. There appeared to be a greater risk among complaints that alleged a serious public trust default.

It is important to note that the above finding was not attributable to any one police department or to any one particular cause.

Wood cited a number of related findings. These included:

- Evidence of the lack of complete acceptance by some police officers of the concept of civilian oversight.
- Inadequacy of the existing oversight powers of the Office of the Police Complaint Commissioner to ensure that all complaints are properly investigated or concluded. For example, the power to order a public hearing is a poor remedy in the case of a complaint that does not meet the high public interest test for ordering such a hearing.
- Evidence of a lack of awareness of the role of the OPCC amongst the general public and service providers who participated in the surveys.
- The current process takes too long to conclude complaints.
- Training specific to the internal investigation function was not available to departments through the Justice Institute of British Columbia between the fall of 1998 and December 2005.

Key recommendations:

Revisions to the model – Wood proposes changes to the oversight process that enhance the civilian oversight powers of the OPCC and identifies new special investigative powers.

Enhanced civilian oversight powers – Wood recommends that the police complaint commissioner is given the power to contemporaneously oversee an investigation into a public trust complaint, together with the authority to give advice and, if necessary, direction with respect to the conduct of that investigation. He also recommends the mandatory implementation of the Professional Standards module of the IPDMA software program (or its equivalent) across all municipal jurisdictions, which would be linked to the Office of the Police Complaints Commissioner. It is estimated that such a system could be designed and implemented with full security for approximately $100,000.

Special Investigative Powers – Wood's proposed amendments to part 9 of the Police Act provide special investigative powers that:

- Every municipal constable, chief constable and deputy chief constable has a duty to co-operate fully with any investigation conducted under Part 9 of the act.
- Every municipal constable, chief constable and deputy chief constable has a duty to co-operate with the police complaint commissioner, and his properly delegated staff, in the exercise of the powers and duties of that office under Part 9 of the act.

Wood's final recommendation is that a follow-up audit of closed complaint files be conducted in three years to determine whether the current model is working.

"It is important to remember that the purpose of this review was not to pass judgment on the public complaint practices of any particular municipal police department or to grade those departments in terms of their handling of such complaints," said Wood. "The purpose was to improve the overall process. Even though the report does reveal some shortcomings in the way public complaints of police misconduct are handled, it would be incorrect to attribute those shortcomings to any particular department."

Wood's review included conducting an audit of 300 closed complaint files, approximately 150 face-to-face interviews with a range of stakeholders, two public surveys, and a survey of all sworn members of the 11 independent municipal police departments.

The entire report can be viewed at www.pssg.gov.bc.ca/police_services.

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1 backgrounder(s) attached.

Media contact:	Cindy Rose Public Affairs Officer 250 356-6961	Joe Wood 604 631-3382

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NEWS RELEASE

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2007PSSG0006-000097
Feb. 7, 2007

Ministry of Public Safety and Solicitor General

REVIEW OF POLICE COMPLAINTS PROCESS PRESENTED TO SG

VANCOUVER – Ninety-one recommendations aimed at improving the police complaint process in independent municipal police departments across the province have been presented to B.C. Solicitor General John Les for consideration.

The recommendations are contained in former justice Joe Wood's Report on the Review of Police Complaints Process in B.C. While the report found the majority of complaints against the police were investigated and concluded in a manner that was both reasonable and appropriate, a random sample audit also showed about one in five complaints were not handled or concluded as well as they could have been.

"Clearly there are areas that need improvement, including possible changes in legislation," said Les. "We intend to carefully analyze this report and implement recommendations where appropriate."

Major recommendations include:

- Strengthening the oversight powers of the Office of the Police Complaint Commissioner (OPCC) to ensure that serious complaints are properly investigated and resolved.
- Shifting from the current model where the OPCC oversees a complaint after police have investigated it, to contemporaneous oversight where the OPCC can be involved throughout the handling of a complaint. This would involve the use of new software to track complaints across all municipal police departments.
- Increasing the police complaint commissioner's powers to include the ability to provide advice or direction to a police department during an investigation; the power to issue guidelines that are binding on police; and statutory responsibility to monitor non-lodged or oral complaints (complaints made by a member of the public who does not want to commit the complaint to writing).
- Compelling police by law to co-operate both with internal and external investigators, including providing a statement and submitting to an interview. Failure to co-operate would constitute a new category of discreditable conduct under the Code of Professional Conduct regulation.

Other recommendations include a program of mandatory mediation conducted by trained and independent mediators; a mandatory requirement that all in-custody and police-related deaths be investigated by an external municipal department; and development of a new public review process that allows the commissioner to order a new review of decisions regarding complaints, short of ordering a full public hearing.

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- It is an express duty on the part of respondent or witness officers to provide a statement, and to submit to an interview, when called upon to do so by an officer conducting an investigation into a public trust complaint. Compliance with such a request is required within five days of its receipt.
- Section 5 of the Code of Professional Conduct Regulation is amended to provide an additional category of discreditable conduct in the form of a failure to co-operate with any investigation or a failure to provide a statement or to submit to an interview when called upon to do so by an investigating officer.
- Police are provided with administrative search warrant provisions.

Mandatory mediation – Wood recommends a statutory program of ordered mediation of public trust complaints where mediation is deemed to be appropriate. A fundamental precondition to adopting mandatory or ordered mediation is that such mediations must be conducted by trained and independent mediators. A successful result of mediation is final.

New public review process – Wood proposes a new public review process to compliment the public hearing process. The public review process would be presided over by an adjudicator, in the form of a review on the record. In effect, the new public review process gives the police complaint commissioner an option to review a decision without ordering a full public hearing.

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Media contact:	Cindy Rose Public Affairs Officer 250 356-6961	Joe Wood 604 631-3382

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The Honourable John Les
Minister of Public Safety and Solicitor General
Room 236, Parliament Buildings
PO Box 9053, Stn Prov Gov
Victoria, BC V8W 9E2

Re: Police Complaint Process Review

Dear Minister:

I am pleased to submit my report following a review of Part IX of the *Police Act*.

Thank you for the opportunity to participate in this process.

Yours very truly,

Josiah Wood, Q.C.

JOW/dxb
Encl.

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. THE METHODOLOGY OF THE REVIEW 3

III. AN OVERVIEW 5

IV. DIVISION 2 – POLICE COMPLAINT COMMISSIONER 13
  A. Powers and Duties of Police Complaint Commissioner 13
  B. Staff of Police Complaint Commissioner 15

V. DIVISION 3 – PROCESSING OF COMPLAINTS 17
  A. Submission of Complaints 17
  B. Characterizing Record of Complaint and Notification 20
  C. Withdrawal of Complaint 21

VI. DIVISION 4 – PUBLIC TRUST COMPLAINTS 24
  A. Application of this Division to Third Party Complainants 24
  B. Resignation, Retirement or Transfer 26
  C. Summary Dismissal of Public Trust Complaints 29
  D. Informal Resolution 32
  E. Investigation of Public Trust Complaints 38
  F. Role of Police Complaint Commissioner in Investigation 42
  G. Reassignment or Suspension Pending Investigation or Hearing 57
  H. Disclosure of Documents and Notices to Respondent and Complainant 58
  I. Prehearing Conferences 63
  J. Convening a Discipline Proceeding 64
  K. Conduct of the Discipline Proceedings 67
  L. Request for a Public Hearing, Ordering Public Hearings and Public Hearing Procedures 70
  M. Compellability 78

VII. DIVISION 5 – SERVICE OR POLICY COMPLAINTS 79
  A. Service or Policy Complaints 79
  B. Investigation of Service or Policy Complaints 79

VIII. DIVISION 6 – INTERNAL DISCIPLINE COMPLAINTS 80
  A. Internal Discipline Complaints 80

IX. DIVISION 7 - GENERAL 83
  A. Criminal Prosecution and Civil Remedies Not Prohibited 83
  B. Complaints Made in Confidence 84
  C. Harassment Prohibited 85
  D. Service Record of Discipline 85

X. CODE OF PROFESSIONAL CONDUCT REGULATION 87

XI. CONCLUSION 89

APPENDICES

APPENDIX A: Recommendations A-1

APPENDIX B: Report On The Administrative Audit Conducted For The Review Of The Police Complaint Process In British Columbia B-1

APPENDIX C: Report On The Investigative Audit Conducted For The Review Of The Police Complaint Process In British Columbia C-1

APPENDIX D: Report On The Police Awareness Survey Conducted For The Review Of The Police Complaint Process In British Columbia D-1

APPENDIX E: Report On The Public Awareness Survey Conducted For The Review Of The Police Complaint Process In British Columbia E-1

APPENDIX F: Report On The Core Area Awareness Survey Conducted For The Review Of The Police Complaint Process In British Columbia F-1

APPENDIX G: Review Participants G-1

APPENDIX H: Review Plan H-1

I. INTRODUCTION

1. In July of 2005 the Minister of Public Safety and Solicitor General instructed the Director of Police Services to conduct a review of the Police Complaint Process, under the authority of s. 42(1) of the *Police Act*.[1]

2. On August 11th I was appointed by the Director of Police Services Division to assist his staff in the conduct of the review, following which I was to prepare a report in which the substance of that review was to be referenced in support of recommendations which I might make for the improvement of Part IX of the *Act*.

3. At the outset I must acknowledge, and express my gratitude for, the contribution made to the review by all the stakeholders of the complaint process. The municipal chief constables facilitated access to their departments' complaint files and provided strong support for the conduct of the review. Executive members of the unions ensured that we were given a valuable insight into their important perspective. In addition to providing full access to the files of his office, the police complaint commissioner and his staff were particularly generous with their time in giving us the benefit of their experience. The thoughtful analysis of the issues and submissions made by the executive members of both the British Columbia Civil Liberties Association and the Pivot Legal Society provided for a balanced outcome. The complainants and respondents, together with counsel and other interested parties, who took time from their busy schedule to meet with us, ensured that all possible perspectives were represented. The collective input of all proved invaluable to the ultimate success of the review.

4. The conduct of the review itself was a cooperative effort of a team consisting of myself, Lynne McInally, Senior Program Manager, Jenni Bard, Program Manager, Tanya Allen, Program Manager, Christal Engleder, Research Analyst and Rachel Graham, Program Administrator, all staff members of Police Services Division. In addition, consistent with the final Review Plan, Staff Sergeant Deborah Chisholm of the RCMP and Peter Juk, of the Ministry of Attorney General, were retained to assist with the conduct of the investigative audit.

5. It has been a privilege for me to have worked with all of these talented and dedicated members of the team, without whose assistance this report would not have been possible. In my view, this review process represents the most comprehensive analysis that has been undertaken to date of an existing Canadian police complaint and civilian oversight process, and the results of the review have provided

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[1] *Police Act*, R.S.B.C. 1996, c. 367 and amendments thereto. (Hereinafter, the "*Act*").

a far greater insight to the workings of that process than any of the theoretical writings on the subject available today. The credit for that belongs to my colleagues on the team.

6. The report, on the other hand, is mine and mine alone and I take full responsibility for any shortcomings or errors that may be found to reside within it. I have no expectation that all of the stakeholders will be satisfied with my recommendations. Indeed, I fully expect that each stakeholder will be dissatisfied with some of the recommendations I have made. At the end of the day, I have sought to improve those areas where Part IX seemed obviously to be lacking and to leave undisturbed those parts which seemed to have escaped consistent criticism.

II. THE METHODOLOGY OF THE REVIEW

7. A draft Review Plan was discussed with the Stakeholder Advisory Committee on September 13, 2005.[2] The review undertaken followed this plan very closely with one exception. Once into designing the Public Awareness Survey, it became apparent that we should consider contracting out a survey dedicated to the core areas of Vancouver, New Westminster and Victoria which, by all accounts, were areas where the indigenous populations were likely to have more frequent contact with the police. Accordingly, the Strathcona Research Group was retained to prepare and report on the Core Area Awareness Survey. That survey was undertaken in the early part of 2006 and the report was concluded and delivered on May 1, 2006. The Core Area Awareness Survey is to be found at Appendix F.

8. The Public Awareness Survey, to be found in Appendix E, was designed by members of the team and, in November 2006, a total of 1,024 residents from the 11 municipalities concerned were surveyed via telephone in one of four languages: English, Cantonese, Mandarin or Punjabi. The sample of respondents was selected through random digit dialling, and was designed to match the British Columbia population in regard to gender, age and ethnic or racial origin. Police Services Division members of the team also designed the Police Awareness Survey, which is to be found at Appendix D, which was initially e-mailed to every sworn member of the 11 municipal police departments (2,245) on October 20, 2005. Between that date and February 24, 2006, an overall response rate of 57 percent (1,270) was achieved at which point the survey was closed.

9. The administrative audit was conducted, again by Police Services Division members of the team. This audit focused on a randomly selected sample of 294 lodged police complaint files that were closed between June 2003 and June 2005. The detailed results of this audit are to be found in the administrative audit report set forth in Appendix B.

10. In addition to the administrative audit, as previously noted, the investigative audit team of Staff Sergeant Deborah Chisholm and Peter Juk reviewed the investigations conducted in each of the 294 randomly selected closed files. This portion of the audit involved a prodigious amount of work as, in most cases, detailed notes were made in response to the 22 questions contained in the audit template. In addition to the 294 closed lodged complaint files, a decision was made early in the review process to obtain a sample of non-lodged complaints from each of the municipal police departments. As it turned out, not all departments had accessible records of such complaints. However, 105 such complaint "files" were obtained from seven of the police services in question. Finally, as a result of the low number of

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[2] See: Appendix H.

substantiated complaints in the randomly selected audit sample of lodged complaint files, for which corrective and/or disciplinary measures were imposed, a request was made of the office of the police complaint commissioner to provide 30 such examples from their closed files. Because these files did not have a corresponding or matching police service file, which would have provided detailed information on the nature of the investigation conducted, the investigative audit team were limited in terms of the observations they could make and the conclusions they could draw from these files. The investigative audit report is to be found at Appendix C.

11. Commencing in February 2006 and continuing through to October, a total of 141 interviews were conducted with chief and deputy chief constables, other discipline authorities, professional standards officers, union representatives, office of the police complaint commissioner personnel, including the police complaint commissioner himself and other interested parties. In addition, each of the respondents named in the 294 randomly selected audit files were invited to participate in an interview if they wished and virtually all complainants named in those same files were sent a similar invitation. I found the interview portion of the review extremely valuable from the point of view of ascertaining the views of representatives of all of the stakeholders in the system. It was a condition of all interviews conducted that, unless express permission was granted to disclose the content of what was said, the substance of the interview itself would be used for information purposes only with the result that the identity, and any details that might identify the identity of the interviewee would not be disclosed. By this means, those who we interviewed were encouraged to speak frankly without fear that they might later be confronted with any criticisms they might have with the process itself.

12. Finally, as part of my responsibility, I undertook a review of the police complaint processes in other Canadian jurisdictions and reviewed vast amounts of material which had previously been accumulated both with respect to Part IX itself and with respect to police complaint processes generally. While these sources of information proved interesting, and in some cases useful, I found the practical results of the administrative and investigative audits, and the interviews, to be the most useful from the point of view of proposing recommended changes to Part IX of the *Act*.

III. AN OVERVIEW

13. No attempt has been made in this report to document the substance of every survey, the audit results or all the interviews conducted. For those who wish to delve into that substance, the survey results and audit reports are attached to this report as Appendices. However, the interviews were conducted on a confidential basis, with each interviewee being assured that their comments would be used for information purposes only. By that means they were encouraged to speak frankly, which most did, and for that reason the notes of their interviews will remain confidential.

14. Before setting forth some general comments and conclusions which flow from the vast bulk of material accumulated and studied during this review, it is important to reiterate what I made clear to the stakeholders when we met in September 2005 to discuss the Review Plan. The purpose of this review was not to pass judgment on the public complaint practices of any particular municipal police department or to grade those departments in terms of their handling of such complaints. The purpose of the review was to address the shortcomings in Part IX of the *Act*, with the ultimate object being recommendations for improvement. Everyone associated with the complaint process, virtually since its inception in 1998, has realized there were problems with Part IX, problems which made it difficult for the police to discharge their responsibility to thoroughly investigate and properly process complaints and problems that made it difficult for the police complaint commissioner to discharge the oversight functions of that office in an effective manner. Thus, wherever possible, the facts accumulated during this review have been reported and will remain anonymous. That is particularly so with respect to the audit results, both administrative and investigative. The purpose in looking back, and examining complaint files closed between June 2003 and June of 2005, was solely to enable me to see what improvements could be made in the process going forward. The audit and interview process did reveal shortcomings in the way public complaints of police misconduct are handled in this province, most of which are documented in the pages of this report solely for the purpose of illustrating the reasons for my recommendations, and it would be wrong for anyone reading this report to attribute those shortcomings to any particular department.

15. One issue that complicates the police complaint process in this province has to do with the fact that Part IX applies to just over one quarter of the total number of peace officers employed within in its borders. Mine is not the first voice to be raised in support of harmonizing the complaint process for at least all police services, both municipal and provincial, in the province. In the report of the Commission of Inquiry into Policing in British Columbia,[1] the Honourable Justice Wallace T. Oppal (as he then was)

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[1] Oppal, the Hon. Wallace T. (1994). *Closing the Gap, Policing and the Community*, Vol 2: pp. I-59 J-23ff. (Hereinafter the "Oppal Commission").

called for such an initiative, as did the Special Committee to Review the Police Complaint Process, in its second report.[4] While any recommendation from me would fall outside the mandate of this review, it is a fact that the current situation creates at least a perception, if not the reality, that complaints about police misconduct are treated differently in municipal and RCMP jurisdictions, raising the spectre of inequality affecting all stakeholders. This problem becomes particularly evident when a complaint is made against the conduct of two or more members of one of the dozen or more joint police units operating within the province where one of the respondents has been seconded from a municipal police department and another from an RCMP detachment. From a purely practical point of view, the narrow application of Part IX necessarily imposes economic constraints on the effectiveness of both the complaint and oversight processes it contains, leaving little or no scope for either process to benefit from the economies of scale.

16. I turn then to some general observations that hopefully will establish context for the substance of the report and the recommendations it contains.

17. The Public Awareness Survey demonstrates that the efforts of the office of the police complaint commissioner, under s. 50(2)(e) of the *Act*, to inform the public regarding both the complaint process and the functions and duties of that office, have so far not met with much success. While only 18 percent of those surveyed expressed a lack of confidence in the complaint process, the reality is that only 55 percent expressed confidence, suggesting that there is room for improvement in both the way in which complaints are handled and the extent to which that process is made known to the general public. The results of the Core Area Survey produced few surprises to those who have had any experience with the social and policing issues in those areas. The numbers, for those who felt that complaints against the police are handled fairly, are essentially the reverse of those gathered in the Public Awareness Survey. One surprise that did emerge from that survey was the extent of the ignorance of the complaint process generally among those employed by the social agencies dedicated to providing assistance to the marginalized groups indigenous to those areas who tend to encounter more frequent contact with the police. These findings provide further evidence of the need for a concentrated public education program by the office of the police complaint commissioner.

18. One interesting result from both the Public Awareness and the Core Area Surveys was that relating to the issue of who should investigate police complaints. In the Public Awareness Survey, less than nine percent of those surveyed were of the view that the police should not be investigating themselves. Even amongst those who were not confident with the current complaint process, only 24 percent expressed that view. These small percentages are supported by the fact that 78 percent of those surveyed in the Public Awareness Survey were of the view that complaints against the police are conducted fairly, notwithstanding that those complaints are investigated exclusively by the police. The Core Area Survey revealed, surprisingly, that only 33 percent of those surveyed, who were not confident in the existing complaint process, were of that view because they believed there was an inherent bias resulting from the police investigating themselves. If one were to take the number who expressed that view (42) as a percentage of the total surveyed (299), the result is a mere 14 percent. While there are obviously limitations on the conclusions that can be drawn from these numbers in both surveys, it is clear that they do not offer support for the argument that the general public is of the view that the only transparent and credible complaint process is one in which so-called civilian investigators, independent of any police service, investigate public complaints of police misconduct.

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[4] British Columbia. Legislative Assembly, Special Committee to Review the Police Complaint Process. (August 2002) *Special Committee to Review the Police Complaint Process*, Second Report. (August 2002). pp. 22-23. See also Special Committee recommendation 42.

19. Of course, those who participated in the Public Awareness and Core Area Surveys did not have the benefit, as we did, of actually assessing the integrity of the complaint process through the audit results. The administrative audit revealed what was confirmed by many to whom we spoke during the interview process, namely that the process takes too long to unfold. A review of the police complaint files conducted between 1992 and 1994, for the Oppal Commission, found that the average length of time between the filing of a complaint, and the letter to the complainant setting forth the conclusions of the investigation, was 127 days.[5] This was the subject of "recurring complaints" by those who appeared before that commission more than a decade ago. The administrative audit performed during the review, found that the average length of time between the day the complaint was lodged and the date of the final investigation report was 190 days or 2 months longer than the same time frame revealed to the Oppal Commission. While that time period is just outside the statutory limit provided for in s. 56(7) of the *Act*, it must be kept in mind that it is an average which means that there were many investigations that took longer to reach that point. When the average time of 105 days it takes for the office of the police complaint commissioner to review the final investigation report and conclude the complaint is added, the result is a complaint process that by all accounts takes far too long to reach a final conclusion. Thus, I have made a number of recommendations which I hope will have the effect of moving the complaint process along more quickly.

20. The investigative audit results are perhaps best summarized by the investigative audit team themselves:

> The majority of the complaint files we reviewed demonstrated to us, on the whole, the departments are investigating and concluding public complaints in a manner that is both reasonable and appropriate. We saw many fine examples of professionalism, thoroughness and objectivity in the handling of police complaints ….[6]

It is, of course, the minority of the complaint files, which were not concluded in a manner that was both reasonable and appropriate, that must necessarily be the focus of my concern when it comes to making recommendations for change. Thus, what follows will concentrate on the negative rather than the positive findings that emerged from our review. The careful reader will want to keep that in mind before drawing conclusions about the integrity of the police services performed by the 11 municipal police departments in this province. Nothing said in this report is intended to detract from the fact that the members of the public in those 11 municipalities are privileged to be served by well trained, highly professional and competent police officers.

21. It is particularly important to keep this in mind when considering the results of the investigative audit, which will be discussed in greater detail later in this report. As will be seen, that audit revealed that there were material flaws in the investigations conducted in 48 out of the 288[7] files in the audit sample of lodged complaints which were subject to processing under Part IX. In addition, there were eight files in which, notwithstanding a relatively complete investigation, the ultimate conclusions were wrong in that the complaints, which should have been, were not concluded as substantiated. Thus, 56 or 19 percent of the complaint files in the audit sample did not meet the reasonable and appropriate standard imposed by the investigative audit team. When one adds the further fact that, of the 56 complaints in question, all but four were serious abuse of authority complaints, these results have to be considered

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[5] Supra note 3, p. I-31.

[6] See: Appendix C, section 2.5.

[7] Six files in the audit sample were reviewed and closed without any further action under Part IX. See: Administrative Audit Report, Appendix B, s. 2.5, p. 8.

unacceptable. These audit results are the driving force behind many of my recommendations, and are therefore necessarily the focus of much of the discussion in this report. Thus, when reading that discussion, reasonable and right thinking members of the public, including the media, will want to keep in mind the important fact that fully 80% of all public trust complaints reviewed in the audit sample were investigated and concluded in a manner that was both reasonable and appropriate.

22. When the results of the review as a whole are considered, it is clear that there is no single explanation for these 56 files. Rather there are a number of factors involved. To begin with, it is apparent that there is a greater risk of such a result when the complaint alleges a serious public trust default. That is just a simple statistical conclusion that can be drawn from the numbers. Thus, for example, of the total of 56 unsatisfactorily concluded files, 36, or 64 percent, involved allegations of excess force. Of the balance, 13 involved allegations of wrongful arrest (5) and wrongful search and/or seizure of property (8).

23. Another matter which must be taken into account is the human factor, which includes matters such as motivation, training and the stress associated with performing what is universally regarded as an unpleasant duty, often under circumstances of inadequate staffing and resources. During the interviews, we met with virtually every present, and a number of past, professional standards officers. Many to whom we spoke were highly motivated to do the job properly. Most of those same individuals told us they took on the job with little or no training in the nuances of either Part IX of the *Act* or internal investigations. The fact is that apart from a stand alone series of courses offered in 1998, when Part IX first came into effect, no course specific to the duties of either professional standards officers or discipline authorities was offered by the Justice Institute of British Columbia until December 2005. Most of the professional standards officers to whom we spoke, both past and present, told us they had no significant investigative experience before being assigned to investigate public complaints of police misconduct. This was a curious revelation, given that the consistent argument advanced as the justification for the police investigating the police is that they, and they alone, have the investigative skills necessary to do the job properly.

24. We also interviewed some past and present professional standards officers who did not have the high degree of motivation that is necessary if one is to perform an unpleasant duty consistently to a high standard of perfection. That too is to be expected on a purely statistical basis.

25. Another factor which accounted for those complaint files that were improperly concluded was the lack of cooperation by respondents. Without the power to force a respondent to give a statement, or submit to an interview, the best professional standards officer is left with little more than a written duty report from which to assess that officer's response to a complaint.

26. As a result of the interviews we conducted, it became apparent that one important factor that tended to influence the outcome of investigations is what is often referred to as the "culture of policing." We heard a lot about the police culture and how it generates a perspective concerning the way in which the police interact with civilians, which is different from, indeed some times opposite to, that which the average citizen holds. Police officers are given extraordinary powers to enable them to perform the duties and functions of policing. Those duties and functions involve not only enforcing the laws and generally maintaining law and order, but also, where possible, preventing crime. Police work is a stressful, complex and often dangerous occupation, which more often than not brings the police officer into contact with those individuals who, for any number of complex reasons, have broken the law and, in the case of some, may reasonably be expected to do so again, possibly with violent consequences. Thus, it is to be expected that there exists a common bond amongst police officers that

leads to a unique perspective on the relationship between the law, which they feel they represent, and the civilian population that they are sworn to serve. That unique perspective shapes not only the way in which they perform their duties, but also the way in which they have a natural inclination to react negatively to complaints about their conduct.

27. Of course, the common bond that effectively results from the unique nature of the police officers' duties and responsibilities is vital to the successful performance of those duties and responsibilities. And, to the extent to which the existence of the police culture can be said to reinforce that common bond, it too is an important factor in effective and responsible policing. However, an exaggerated view of that culture and, in particular, the extent to which it not only explains but is used to justify what the civilian sometimes sees as misconduct, can create a mindset that resists both the thorough investigation of complaints and the existence of civilian oversight. The review we have conducted demonstrates that mindset still exists today among some police officers.

28. That brings me to the civilian oversight process in Part IX. It became obvious early in this review, that the police complaint commissioner had few effective powers with which to ensure that all public complaints were thoroughly investigated and properly concluded. As will be discussed in greater detail later in the report, the power to order a further investigation by an external police department is a poor remedy for an initial investigation that is flawed, and the power to order a public hearing is an equally poor remedy for an erroneous disposition in the case of a complaint that does not raise issues that meet the high public interest standard required to justify engaging that seemingly complex, expensive and generally unsatisfactory process.

29. To that must be added the factor which caused me the greatest concern as this review unfolded, namely the lack of complete acceptance by the police of the concept of full civilian oversight. By this I do not mean to suggest that police officers generally, and police management in particular, reject the concept of "police accountability." All discipline authorities, professional standard officers and union representatives to whom we spoke were genuine in their recognition of the importance of the duty of accountability. What is at issue here is the extent to which that duty of accountability extends, when it comes to the complaint process, and the oversight role of the police complaint commissioner.

30. Thus, we heard of instances where the authority of the office of the police complaint commissioner was challenged when requests were made to reconsider decisions or produce investigative files for review. The Police Awareness Survey revealed that less than 20 percent of officers with the rank of corporal or below (74 percent of those surveyed) who were surveyed "expressed confidence" in the performance of the office of the police complaint commissioner. Even within the executive ranks, where 67 percent expressed confidence in the performance of the office of the police complaint commissioner, there is evidence of a certain wariness regarding the powers of the police complaint commissioner, and an anxiety that any increase in those powers will somehow have a negative impact on police independence. Thus, the British Columbia Association of Municipal Chiefs of Police (hereinafter the "BCAMCP") cautions against "unconstrained authority in the OPCC" and expresses concern that an atmosphere of fear will develop in police officers faced with "vexatious complaints buttressed by a discipline process lacking in balance" which, in turn, will create "an environment cool to the resolute investigation of criminality."[8]

31. The creation of a balanced civilian oversight process is an objective I believe to be shared by all of the chiefs and deputy chief constables, as well as those representatives of the unions, the Pivot Legal

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[8] BCAMCP. (April 2006). *White Paper on Police Act Reform, Response of the British Columbia Association of Municipal Chiefs of Police*. p. 5.

Society, the British Columbia Civil Liberties Association (hereinafter the "BCCLA") and the office of the police complaint commissioner, to whom we spoke. What brings out the difference among those groups is the perspective from which they view that balance.

32. My role is to set that balance, after having the benefit of their diverse points of view on this most difficult of issues. In doing so I start with the proposition that in 1998 the Legislature adopted a police complaint model that left the responsibility for investigating complaints, and imposing discipline for proven misconduct, with the police and provided for a civilian authority, independent of government, to oversee the discharge of those responsibilities. As will be discussed below, the results of this review have not persuaded me that it is necessary at this time to change the basic structure of that model.

33. That said, I regard freedom from police misconduct as one of the fundamental values that define a free and democratic society, just as surely as I regard freedom from the fear of political interference as a fundamental value that defines the independence of the police who serve and protect our free and democratic society. In that balance, I see no threat to the independence of the police from a vigorous and effective exercise of civilian oversight. What must be kept in mind, in the debate between the many different perspectives on this issue, is that without public confidence in the integrity of the police, their authority is undermined and their independence threatened. It is to the maintenance of public confidence in the integrity of the police, that strong effective oversight of the current complaint process is so essential. Thus, in response to what I perceive to be the inadequate oversight powers presently vested in the office of the police complaint commissioner, I have recommended a substantial shift in the balance presently existing, mindful of the fact that in doing so I am augmenting the powers of an authority as equally independent from the fear of political interference as are the police themselves.

34. There are many other recommendations that flow from the valuable input we receive from all stakeholders in the complaint process. One other matter, that was frequently the subject of comment both during interviews and in written briefs we were provided with, is the ineffective, indeed cumbersome and expensive, public hearing process currently in place. In attempting to provide an alternative form of independent review of decisions made in the complaint process, I have had to recommend changes to the processes by which those decisions are made so as to ensure the existence of an adequate record as the basis for such review.

35. I have not attempted to draft any proposed legislative changes. I leave that task to those with the required talent and skill. Nor have I attempted to identify all of the consequential amendments that will necessarily flow from those of my recommendations that are implemented. However, in that regard, it will be obvious that many, if not most, of my recommendations are dependent upon one another, with the result that care should be taken when deciding which ones to implement so as not to separate those that are clearly dependent on each other if they are to be effective.

36. Finally, I would be remiss if I failed to acknowledge two substantial bodies of work on which I have relied heavily when weighing the evidence accumulated in this review. The first is the work of the previously mentioned Special Committee to Review the Police Complaint Process, which sat from November 2001 to May 2002 and produced a thoughtful Second Report in August 2002, containing some 42 recommendations for changes which they concluded would improve the process. While I have not always acknowledged its influence, many of the recommendations I have made closely parallel ones found in that report, and I have found not only the report itself but the published briefs presented to the Committee and the transcript of its proceedings to be of great assistance to me.

37. I must also mention the other work on which I have relied heavily. In March of 2005, the police complaint commissioner issued a White Paper containing a great many proposals for changes to the current police complaint process.[9] It also proposes that the complaint process, in its entirety, be removed from the *Police Act* in order to reinforce the independence of the office he holds from any perceived influence of either the police or the executive branch of government. A draft statute attached to the White Paper embodies the many proposals for change that are described in the White Paper.[10]

38. In describing the White Paper in his 2004 Annual Report to the Legislature, the police complaint commissioner pointed out that none of the recommendations for change to Part IX of the *Act*, proposed in the Second Report of the Special Committee of the Legislature, following that committee's hearings in 2001 and 2002, had yet been implemented.[11] He also noted, as did virtually all to whom we spoke during our review, that Part IX has a number of shortcomings that need to be addressed. He offered his draft Police Complaint Act as a model for how those recommended changes and shortcomings could be addressed.

39. Both the draft Police Complaint Act and the White Paper have been most helpful to me in my effort to discharge the mandate of this review. While I have not adopted all the changes proposed by the police complaint commissioner, the careful work which he and his staff, together with legal counsel, put into both documents has given me a template against which to test the many, and often disparate, recommendations for change which emerged from both the written briefs submitted to us and the interviews which we conducted during the review.

40. During the course of my interviews with the police complaint commissioner, he reiterated his strong belief in the need for the current Part IX complaint process, including all matters relating to the statutory structure of his office and its relationship to the Legislature, to be in a separate statute which he suggests be under the legislative responsibility of the Attorney General.

41. The authority for this review is found in s. 42 of the *Act* which vests the Minister of Public Safety and Solicitor General with the authority to direct the Director of Policing to study, investigate and prepare a report, *inter alia*, on matters concerning policing. The terms of reference for this review describe the scope of my mandate:

> The review will address the following issues:
>
> - The adequacy and effectiveness of the current complaint process set out in Part IX of the *Police Act* including reviewing how it is currently implemented and any recommendations for change, and
> - The integrity of, and the confidence of stakeholders in, the conduct of the police complaints investigations by municipal police departments.
>
> ...
>
> The review will include consideration of the following:
>
> - The current legal framework for the police complaint system including, but not limited to, the statutory authority and duties and responsibilities of the Discipline Authority and the duty of police officers to account for their activities;

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[9] Ryneveld, Dirk, Q.C. (March 2005). *Police Act Reform, White Paper & Draft Police Complaint Act*. (Hereinafter, the "White Paper").

[10] Ibid. (Hereinafter, the "draft Police Complaint Act").

[11] British Columbia Police Complaint Commissioner. *2003 Annual Report*, p.5.

- Compliance of independent municipal police departments with applicable *Police Act* requirements;
- The practices of Internal Investigation Sections in conducting police complaint investigations;
- The management practices of Chief Constables in supervising, managing and ensuring proper internal investigation processes;
- The perception of the fairness of the current police complaint process by stakeholders including, but not limited to, Chief Constables, Police Unions/Associations, Discipline Authorities, police officers, respondent police officers, complainants, witnesses, staff of the office of the police complaint commissioner, and other relevant stakeholders identified in the Review Plan;
- Identification of various service or policy issues applicable to the audit;
- The recommendations of the Special Committee of the Legislature done under s. 51.2 of the *Police Act*; and
- The report of the Police Complaints Commissioner – Pivot Complaints against VPD.[12]

42. Throughout the course of this review I have been guided by these terms of reference. They clearly include the authority to review and make recommendations with respect to the oversight powers of the police complaint commissioner to the extent that those powers, or the lack thereof, relate to the adequacy and effectiveness of the current complaint process. However, in my view, matters related to whether there ought to be a separate statute pertaining to the police complaint process, and which Ministry should have responsibility for that statute, fall outside the terms of reference for this review. For that reason, I decline to make any recommendations with respect to the statutory structure of the police complaint process.

43. For the same reason, I also decline to make any recommendations regarding a number of amendments which the police complaint commissioner proposes in Part II of his draft Police Complaint Act. These include such matters as the process by which the police complaint commissioner is appointed by the Legislature, the number of six year terms the police complaint commissioner should be eligible to serve, the remuneration of the police complaint commissioner, the application of the Public Service Pension Plan to the police complaint commissioner and the length of absence from the office which should trigger the appointment of an acting police complaint commissioner by the Lieutenant Governor in Council.

44. In what follows I have referred to most, but not all, of the many proposals for change that are to be found in the police complaint commissioner's draft Police Complaint Act relating to the actual complaint process itself. The fact that I fail to deal with a specific recommendation should not be taken as any indication that it is an ill-conceived or improper proposal. It merely indicates that, in the overall scheme of Part IX, I have not considered it to be necessary. Furthermore, to the extent that I have obviously not accepted a particular recommendation, does not mean that it was unworthy of consideration. As indicated, I have found all of the thoughts expressed in the White Paper, the proposals in the draft Police Complaint Act and the candid and thoughtful views of the police complaint commissioner in our discussions, to be most helpful in the course of working through this most challenging exercise. To the extent that some of my recommendations may be at odds with some of his is a reflection of the fact that I have found it necessary to balance as much as possible the views of all the stakeholders in this process.

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[12] "Terms of Reference for Review under s. 42 of the *Police Act*." (August 2006).

IV. DIVISION 2 – POLICE COMPLAINT COMMISSIONER

A. POWERS AND DUTIES OF POLICE COMPLAINT COMMISSIONER

45. From the Public and Core Area Surveys conducted, it is apparent that there is a significant lack of understanding in the public generally with respect to both the complaint process and the functions and duties of the police complaint commissioner. It is evident that whatever efforts have been made under s. 50(2)(e) of the *Act* in the past, to inform the public with respect to these matters, they have not been particularly successful. No doubt priority has been given to other duties of the office when considering the expenditure of both available time and financial resources.

46. In s. 9(2)(e) of his draft Police Complaint Act, the police complaint commissioner has proposed the words "develop an outreach program" be added to s. 50(2)(e) of the *Act*. This proposal is intended to reflect a similar recommendation of the Special Committee of the Legislature, which included a rider that such education and outreach initiatives acknowledge and address the needs of diverse communities including marginalized groups.[13]

47. While I am of the view that the duty to "develop outreach programs" is already included in the s. 50(2)(e) duty to "inform the public", I see no harm in adding those words to s. 50(2)(e) to emphasize that what is needed is a coherent program of public education. In addition, the results of the Core Area Survey demonstrate that s. 50(2)(e) must emphasize the duty to direct such educational and outreach initiatives, in particular, to the marginalized groups in our society whose condition in life is such that they are likely to come into more frequent contact with the police. Accordingly, I recommend that s. 50(2)(e) be amended to include the duty to develop outreach programs with particular emphasis on those that address the needs of diverse communities including marginalized groups in our society.

48. Another recommendation of the Special Committee of the Legislature was that the discretionary duties in ss. 50(3)(a), (c), (d) and (e) be made obligatory.[14] With one exception, I have decided against recommending this change to s. 50(3). In my view the existence of these discretionary powers is sufficient to enable the responsible exercise of judgment on the part of the police complaint commissioner with respect to what informational reports, recommendations or studies, for whatever reason, may be needed at any given point in time. To convert these broad discretionary powers into

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[13] Supra note 4, p. 8. See also Special Committee recommendation 3.

[14] Ibid. pp. 7-8. See also Special Committee recommendation 4.

duties will only burden the police complaint commissioner with the task of making many such reports and recommendations in circumstances where their utility would, at best, be questionable. However, I do agree that the discretionary power in s. 50(3)(d), to prepare guidelines respecting the procedures to be followed by a person receiving a complaint, be made mandatory by removing it to s. 50(2). As will be described in greater detail later, the audit revealed the need for such guidelines which unfortunately, to date, have never been produced. Accordingly, I recommend that the discretionary power in s. 53(3)(d) be converted into a mandatory duty in s. 50(2).

49. There is one mandatory duty that I would add to s. 50(2). During the review, the investigative audit team saw evidence of what might be considered trends in the repetitive incidence of certain types of complaint. For example, fully one-third of the public trust complaints reviewed in the audit sample included allegations of excess force. It is not for me, from this distance, to say whether that number is evidence of a trend, but if someone with the ability to make that judgment were to conclude that it is, then in my view that is something that ought not to be ignored. I do think the police complaint commissioner is in a position to make that sort of judgment and that, as part of the mandatory duties of his office, he and his staff ought to keep an eye out for such phenomena and, when one is identified, to take steps to bring it to the attention of whatever level of authority can properly address the issue. Accordingly, I recommend that s. 50(2) be amended by adding thereto a duty to conduct reviews with respect to the frequency and demographics of complaints so as to identify the development or existence of trends of alleged misconduct and to make whatever recommendations or take whatever actions as may seem necessary in the circumstances.

50. As previously indicated, I am of the view that the oversight powers of the police complaint commissioner must be significantly enhanced if the current model of civilian oversight of the police is to be effective. To ensure that there is no ambiguity with respect to the authority of the police complaint commissioner and his staff, to exercise the enhanced powers which I recommend and describe more fully later in this report,[15] I am of the view that s. 50(2) of the *Act* should be amended to specifically set forth the scope of that expanded authority. Accordingly, I recommend, that s. 50(2) of the *Act* be amended by adding thereto the duty to oversee and, in consultation with the discipline authority, to advise and, if necessary, to direct the course of an ongoing investigation into a public trust complaint.

51. In ss. 9(6), (7), (8) and (9) of his draft Police Complaint Act, the police complaint commissioner proposes that he have a discretionary power to issue binding directives, the breach of which by a police officer would constitute a discipline default. In addition to establishing a broad power to supplement the statutory practices and procedures of the complaint process, this power is intended to include the current s. 50(2)(j) mandatory duty to issue guidelines for informal resolution and the s. 50(3)(d) discretion to prepare guidelines respecting the procedures to be followed by a person receiving a complaint.

52. The BCAMCP objects to this proposal, principally on the ground that it may tend to encourage the police complaint commissioner to become more actively involved in overseeing the actual conduct of investigations, as opposed to reviewing them once they are concluded.[16] As noted, and will be discussed in more detail below, I am of the view that such more active involvement of the police complaint commissioner in the conduct of ongoing investigations under Part IX is, in any event, now necessary.

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[15] See: paragraphs 207-208, infra.

[16] Supra note 8, pp. 7-8.

53. The problem this proposal by the police complaint commissioner seeks to address is the fact that the only guidelines presently authorized by the *Act* are those referenced above and found in ss. 50(2)(j) and (3)(d). Almost immediately after Part IX came into effect, it became obvious that there were many parts of the complaint process where guidelines were needed, either because of lacunae in the *Act*, or simply because of the need to standardize practices across the municipal police departments. Thus, over time, some 12 "Guidelines" or "Practice Directives" were issued by the office of the police complaint commissioner,[17] only one of which, the undated "Practice Directive on Informal Resolutions" was actually sanctioned by the *Act*. Notwithstanding that for the most part these guidelines and practice directives were issued following stakeholder consultation, and contrary to the suggestion in the brief of the BCAMCP prepared in response to the White Paper, I am advised that their authority was frequently challenged. Whatever their underlying motivation, such challenges were legally well founded since the police complaint commissioner was without the statutory authority to issue any such guidelines or practice directives other than that under s. 50(2)(j).

54. Each of the present Guidelines and Practice Directives were developed in response to a need to provide guidance to, and to standardize the practice of, those responsible for implementing the complaint process. In that sense they were considered essential at the time they were prepared. No statutory scheme can ever account for every circumstance that will arise in the course of its application. Indeed, it would be highly undesirable to attempt to draft legislation that would provide for every compliance contingency. Thus, guidelines will always be necessary, and it is essential that the power to make them be clearly provided for in the *Act*. Accordingly, I recommend that the police complaint commissioner, in consultation with relevant stakeholders affected, have the power to issue guidelines with respect to matters not covered by the provisions of the *Act*, but nonetheless necessary to ensure that the objectives of Part IX are achieved. Such guidelines must not be inconsistent with any provision of the *Act*.

55. Some of the 11 unauthorized Guidelines and Practice Directives presently in existence will no longer be relevant if the recommendations in this report are implemented. Others may need to be revised, again depending on the extent to which my recommendations are implemented. Without reviewing each one in detail in this report, I recommend that Part IX be amended by ratifying the existing Guidelines and Practice Directives, to the extent that they are not inconsistent with any recommendations implemented, until such time as they are either withdrawn by the police complaint commissioner or amended after consultation with relevant stakeholders.

56. There remains the issue of whether these guidelines should be "binding" as recommended by the police complaint commissioner. There is a little point in making them if they are not to be binding on those to whom they are meant to apply. Accordingly, I recommend that such guidelines as are made pursuant to this recommendation be binding upon all participants in the Part IX complaint process, subject to the discretion of the police complaint commissioner to waive them in any case where their application would be unreasonable in all its circumstances.

B. STAFF OF POLICE COMPLAINT COMMISSIONER

57. During interviews, we learned that there have been occasions in the past where the authority of members of the police complaint commissioner's staff, to perform the limited oversight powers presently found in the Act, had been challenged. The power of the police complaint commissioner

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[17] Office of the Police Complaint Commissioner, British Columbia. "Guidelines, Practice Directives & Policies." www.opcc.bc.ca

to delegate his authority would seem implicit in s. 51(1). However, with the exception of his power in s. 51(3), to delegate his functions to the deputy police complaint commissioner during his absence for up to 30 days, there is no specific power in Part IX to enable him to delegate any of his powers to staff members. In my view, such a power should be expressly set out in the Act. In s. 10(4) of his draft Police Complaint Act, the police complaint commissioner has proposed such a power. I agree with his suggestion, but would increase the list of powers that cannot be delegated except to the deputy police complaint commissioner as provided for in s. 51(3). Accordingly, I recommend that s. 51 of the Act be amended to provide that the police complaint commissioner may delegate any duty or power he may exercise under the Act to any member of his staff, except for the power to order:

- that a complainant not be allowed to file any further complaint without first obtaining the permission of the police complaint commissioner;[18]
- that the investigation into a third party complaint be discontinued and the complaint summarily dismissed;[19]
- an investigation;
- an external investigation;
- that further or better investigative steps by taken;[20]
- a public review;[21] or
- a public hearing.

58. In s. 11 of the police complaint commissioner's draft Police Complaint Act, it is proposed that he and his staff not be compelled either to testify or to produce, in any proceeding other than a criminal proceeding, any record or other information obtained in the course of discharging their duties under Part IX of the *Act*. In s. 13, it is further proposed that immunity be provided to the police complaint commissioner, his staff, employees, agents or any person acting under his direction with respect to the performance, or intended performance, of any duty or the exercise of any power under the *Act*. This latter proposal would not extend such immunity to anything done or omitted in bad faith. These are both sensible proposals and I so recommend.

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[18] See: paragraph 126, infra.

[19] See: paragraph 99, infra.

[20] See: paragraph 207, infra.

[21] See: paragraphs 292-296, infra.

V. DIVISION 3 – PROCESSING OF COMPLAINTS

A. SUBMISSION OF COMPLAINTS

59. Section 52(4) of the *Act* requires that before an oral or written complaint can be processed under Division 4 or 5 of the *Act*, it must be "committed to writing in the prescribed form",[22] which must then be lodged with one or more of the individuals described in s. 52(2).[23] This requirement has resulted in the creation of two classes of complaints, those with respect to which the formal requirements of s. 52(4) are met and those, both oral and written, which are not committed to writing in the prescribed form. This latter class has come to be known as non-lodged complaints. Because of the strict requirements of s. 52(4), non-lodged complaints are not processed in accordance with the requirements of Part IX and, more importantly, their investigation and disposition is not subject to the oversight of the police complaint commissioner.

60. In addition to the 294 formal or lodged complaints in the main audit sample, the review team conducted a review of 105 non-lodged complaint files which were obtained from those departments which had organized and accessible records of such complaints in sufficient numbers to permit relevant sampling.[24]

61. The audit revealed considerable variation in the manner in which each department keeps track of non-lodged complaints. In the case of some departments, complete internal records of such complaints are maintained. In others, the audit revealed scant evidence of any systematic record keeping. The review also revealed that the handling of non-lodged complaints varies from department to department. Some departments simply attach a written complaint to a Form 1 and treat it for all purposes as a lodged complaint. This practice, while outside the mandatory provisions of s. 52(4), has quite sensibly been sanctioned by the police complaint commissioner. Other departments refuse to accept a complaint as lodged unless the complainant completes and signs a Form 1. In the case of some oral complaints, it was noted that the discipline authority either completed a Form 1 or requested the police complaint commissioner to order an investigation under s. 55(3) of the *Act*. While this is a laudable practice, which reflects an appropriate commitment to accountability, the audit revealed that it was not systematically or consistently followed by any of the departments.

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[22] *Police Act Forms Regulation*, B.C. Reg. 202/98 mandates the Form 1 Record of Complaint as the "prescribed form."

[23] The police complaint commissioner, the discipline authority as defined in s. 46(1) or a senior constable of the municipal police department with which the respondent, if any, is employed.

[24] Samples of non-lodged complaints were obtained from Delta (15), New Westminster (15), Saanich (15), Vancouver (20 out of 30 selected; records of 10 requested could not be located.), West Vancouver (11), Victoria (15) and Abbotsford (14).

62. Of the 105 non-lodged files reviewed, a total of 14 proved to be irrelevant to the audit analysis,[25] four were ultimately lodged and three were the subject of an ordered investigation under s. 55(3). A total of 69 of the remaining 84 non-lodged files reviewed, contained allegations of a public trust default. Based on the serious nature of the allegations, the investigative audit team concluded that 28 of those 69 complaints ought to have been the subject of a lodged complaint so as to engage both the process requirements of Part IX and the oversight function of the police complaint commissioner.

63. Notwithstanding the requirements, in ss. 52(3) and (5) of the *Act*, that a person receiving a complaint assist the complainant in submitting a complaint and completing a record of the complaint, the review of non-lodged complaint files revealed little evidence of any such efforts. Only six of the 28 files in which a formal complaint should have been lodged, contained any indication that the complainant was provided with a Form 1. Overall, of the 91 relevant non-lodged complaint files reviewed, only 22 contained any such indication. In the case of six of those files, the complainant went on to complete a Form 1,[26] and three were the subject of an ordered investigation at the request of the discipline authority. The overall impression of the investigative audit team was that if a complainant did not make the extra effort to complete a Form 1, or the person receiving the complaint was able to talk them out of doing so, no investigation was conducted. In many instances, questionable records were kept of the complaint even when the allegation may have involved a serious breach of the *Code of Professional Conduct*.[27]

64. Of the 28 non-lodged complaints, which the investigative audit team determined should have been lodged, nine contained no indication of any disposition whatsoever and a further eight recorded a disposition which the investigative audit team was unable to conclude was appropriate.

65. Many of the non-lodged complaints were made orally. While there is a point of view, reflected both in prevailing Canadian police complaint legislation and in the interviews conducted as part of this review process, that a complaint should not be taken seriously unless the complainant has at least taken the time and trouble to set it out in writing, there is no reason why a written complaint should not be processed under Part IX simply because it is not in the prescribed form. From the foregoing, it is apparent that the rigid requirements of s. 52(4) currently operate to discourage some complainants from proceeding further with their complaints, thus preventing some complaints from being properly processed under Part IX of the *Act*.

66. One option would be to do away with the Form 1 requirement in s. 52(4) altogether and simply provide that any written complaint received by any of the persons designated in s. 52(2) be processed according to the requirements of Part IX. However, it is apparent that the Form 1 contains, or at least is designed to record, information essential to the establishment of a formal complaint file, both in the police department concerned and in the office of the police complaint commissioner. For that reason, it is my view that the Form 1 should be retained as the foundational document in both the file kept by the police department receiving the complaint and in its counterpart in the office of the police complaint commissioner.

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[25] See: Appendix B, footnote 36.

[26] However, 2 of the Form 1 complaints were not forwarded to the office of the police complaint commissioner, with the result, as noted, that only 4 were processed as lodged complaints under Part IX.

[27] *Code of Professional Conduct Regulation*, B.C. Reg. 205/98.

67. The practical solution, as noted by the police complaint commissioner[28] and a number of individuals we interviewed, and which in fact was recommended by the Special Committee of the Legislature,[29] is that any complaint received in writing simply be attached to the Form 1, following which the complaint would be processed as if, to use the language of the present s. 52(4), it had been committed to writing in the prescribed form. I agree, and recommend that in any case where a written complaint is received in other than the prescribed form, it should simply be attached to a Form 1 and processed in the ordinary way under Part IX. To this I would add that the person receiving such a written complaint must be required to complete the substantive portion of the Form 1, either by drawing the relevant information from the written document provided by the complainant, or by contacting the complainant to obtain the necessary information.

68. Notwithstanding the argument that only written complaints should be accepted for processing under Part IX, the audit revealed that there were a number of oral complaints that, on their face, were serious enough to warrant being treated as lodged complaints. In most of those cases, the file did not reveal that any effort was made by the person receiving those complaints to comply with the mandatory requirements of ss. 52(3) and (5). Furthermore, with no oversight of at least the manner by which such complaints were disposed of, it was impossible to say that all were properly concluded.

69. For those reasons, I recommend that a formal record be kept, in a standard form, of all oral complaints received which, for whatever reason, are not subsequently reduced to writing. Such complaints should be recorded in a new form provided for in the *Police Act Forms Regulation*[30] which would require that the person receiving the complaint record the name and contact particulars of the complainant, the name and PIN number(s) of the respondent(s) if known, details of the complaint, including the date and location of the alleged conduct complained of, the steps taken to assist the complainant in committing the complaint to writing, including the reasons why the complainant refused to accept such assistance. A copy of this form should be provided to the police complaint commissioner, forthwith upon final disposition of the oral complaint, and a copy must be maintained in the department's complaint records together with the content, if any, of the file associated with the processing of the complaint.

70. In addition, I recommend that the *Act* should clearly provide the police complaint commissioner with the power both to undertake whatever review is deemed necessary to ensure that an oral complaint has been properly disposed of and, again where it is deemed necessary, to order an investigation of any such complaint. While in a general sense such powers may presently be seen to exist in s. 50(4) and s. 55(3) of the *Act*, a reference to those powers specifically in connection with non-lodged oral complaints will remove any ambiguity that might otherwise be seen to limit the police complaint commissioner's oversight powers in regard to such complaints.

71. Section 52(3)(c) references the power of the police complaint commissioner, found in s. 50(3)(d), to make guidelines respecting the procedures to be followed by the persons authorized by ss. 52(2)(b) and (c) to receive complaints. As noted, I am advised by the police complaint commissioner that no such guidelines have ever been produced. Notwithstanding the duties imposed upon persons receiving complaints, in ss. 52(3) and (5), it is apparent from the results of the audit that, in many cases an inadequate level of assistance is being offered to those individuals who do not complete a Form 1 of their own accord. It is impossible to recommend amendments to ss. 52(3)(a), (b), (c) and (5) which would make the duties there described any clearer. However, it may well be that guidelines which set out

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[28] See: s. 15(2) of the draft Police Complaint Act.

[29] Supra note 4, p.12. See also Special Committee recommendation 6.

[30] Supra note 22.

specific details of both the procedures to be followed, and the nature of the assistance to be provided, by those persons described in ss. 52(2)(b) and (c) would help to overcome the problem revealed by the audit. Thus, as noted, I have recommended that the discretionary power to produce such guidelines be converted to a mandatory duty.

72. Section 52(2) limits the persons who can receive a complaint against a municipal constable, chief or deputy chief constable or a municipal police department to the police complaint commissioner, the discipline authority or a senior constable of the municipal police department with which the respondent, if any, is employed or about which the complaint is made. As noted by the police complaint commissioner in his White Paper, Professor Stenning found this narrow range of eligible recipients to be a weakness in the Part IX complaint process.[31] Thus, in s. 15(4)(d) of his draft Police Complaint Act, he proposes to add to the list in s. 52(2) any provincial, federal or local person, official or agency designated by him to receive complaints under Part IX. This proposal is consistent with the spirit of a similar recommendation by the Special Committee of the Legislature.[32]

73. As noted, ss. 52(3)(a) through (c) and (5) mandate that the person receiving a complaint assist the complainant in a variety of ways designed to ensure that the desire to lodge a complaint is not frustrated. The same mandatory requirements must be imposed upon any other individuals or agencies who may be authorized to receive complaints. Providing the individuals or agencies that the police complaint commissioner were to designate are able, and are trained so as to be able, to comply with those mandatory requirements, I think his proposal is a sensible one and I so recommend.

B. CHARACTERIZING RECORD OF COMPLAINT AND NOTIFICATION.

74. The characterization of a complaint determines whether it will be processed under Divisions 4, 5 or 6 of the *Act*. There are two issues that, in my view, need to be addressed in connection with this initial step in the complaint process.

75. The first has to do with the definitions of public trust default and internal discipline complaint. Paragraphs (a) through (c) of the former are cast in such broad language as to encompass virtually any conduct which meets the definition of a discipline default under the *Code of Professional Conduct Regulation*,[33] irrespective of whether a member of the public has been directly affected by the conduct complained of. The definition of an internal discipline complaint suffers from two handicaps. Because of its reliance on the definition of a public trust default, paragraph (a) only refers to conduct not caught by that overly broad definition. Paragraph (b) confuses the definition of a complaint with the manner in which that complaint is to be processed in certain rather narrow circumstances.[34] It also suffers, at least superficially, from an apparent circularity which adds little or nothing to one's understanding of the true nature of the type of conduct which, in ordinary circumstances, is intended to be processed under Division 6 of the *Act*.

76. In my view, amendments to the definition of both a public trust default and an internal discipline complaint are necessary as a starting point to a coherent discussion of characterization. Thus, I recommend that the definition of a public trust default be amended to clarify that it is conduct which

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[31] Stenning, Phillip. (August 1998). *Review of Part 9 (Complaint Procedure) of the British Columbia Police Act, as amended by Section 36 of SBC 1997, c. 37*. p. 7.

[32] Supra note 4, pp. 7-8. See also Special Committee recommendation 22.

[33] Supra note 27.

[34] See: s. 64(5) and s. 65.1(6) of the *Act*.

directly involves or affects a member of the public and which, if proved, would constitute a discipline default that results in one or more of the consequences described in paragraphs (a) through (c) of the present definition. As a necessary corollary, the definition of an internal discipline complaint must be amended by striking out paragraphs (a) and (b) of the present definition and providing simply that it involves conduct that relates to the acts, omissions or deportment of a respondent which does not directly involve or affect any member of the public.

77. The second issue, in my view, is one of significant importance, namely, the time and effort that is expended in the present characterization process. The administrative audit revealed that, out of 294 complaints in the audit sample, 277, or 94%, were ultimately characterized or processed as including one or more alleged public trust defaults and were processed as such under Division 4.[35] The administrative audit further revealed that, of 284 files in which the dates of both the lodging of the complaint and its characterization by the discipline authority where recorded,[36] the median time for completion of this process was nine business days and the median time for transmittal of that characterization to the office of the police complaint commissioner was a further one business day. Thus, in the case of one half of all complaints, at least ten business days were taken up with the characterization process before the police complaint commissioner could embark upon the process of confirming that characterization as required by s. 52.1(6). While the audit was unable to record the median length of time it took for the office of the police complaint commissioner to confirm the characterization in those complaint files,[37] that process would necessarily have added some number of business days to the delay before the investigation of a public trust complaint could begin.

78. Quite apart from the labour-intensive nature of the characterization process, which necessarily diverts already scarce resources away from other more important duties under the complaint process, I am persuaded that the small number of complaints which do not fall within the definition of a public trust complaint do not warrant maintaining a characterization process that adds a minimum of two weeks to the resolution of at least one half the complaints that do meet that definition. Certainly, in light of the vast proportion of complaints that are ultimately properly characterized and processed as public trust complaints, there can be no justification for maintaining the timelines set forth in ss. 52.1(3) and (7) which collectively have the potential to delay the processing of such complaints for up to a full month. Indeed, when the small proportion of complaints other than public trust complaints are taken into consideration, the need for such a lengthy formal characterization process seems in doubt.

79. Accordingly, I recommend that all lodged complaints should presumptively be characterized as public trust complaints unless the police complaint commissioner is satisfied, either on his own motion or upon application by the discipline authority made forthwith upon receipt of a complaint, that it should be characterized as an internal or a service and policy complaint.

C. WITHDRAWAL OF COMPLAINT

80. The audit revealed that a notice of withdrawal was filed in 27 of the 294 complaint files reviewed. Of those, the investigative audit team concluded that three warranted further investigation. None of these files revealed any evidence of duress. Rather, the conclusion that further investigation ought to have been undertaken, notwithstanding the withdrawal, was provoked in each case by the nature of the

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[35] 8 were never formally characterized, although they were handled as public trust complaints. Of the balance, 6 were compound complaints, service and policy and internal complaints accounted for 4 each and 3 complaints were found not to fall under Part IX of the *Act*.

[36] In 10 such cases either or both dates were not recorded.

[37] The administrative audit had a limited number of fields available for data collection.

conduct alleged in the original complaint together with other circumstances revealed when the police file was reviewed.

81. This demonstrates the practical weakness in the current oversight power provided to the police complaint commissioner in ss. 52.2(4) through (6) inclusive. With nothing more than the Notice of Withdrawal on which to base a decision, and no express power to review the contents of the police file, the police complaint commissioner has precious little material on which to make a determination under any of those subsections.

82. However, if the recommendations which I am making with respect to the power of the police complaint commissioner to contemporaneously monitor the ongoing progress of all complaint files are implemented,[38] the police complaint commissioner will have a basis upon which to make such a determination. In that event, the ability to determine whether either there has, in fact, been some form of duress leading to the filing of the notice of withdrawal, or there is some other good reason why a complaint that has been voluntarily withdrawn should nonetheless be processed, will be enhanced with the result that those subsections will have some meaning.

83. That said, there are two other matters that, in my view, need to be addressed before leaving s. 52.2. The first is that I can see no reason why the purpose of ss. 52.2(6) and (7) need to be split between two subsections or, more particularly, why the power of the police complaint commissioner, described in ss. 52.2(7) should be described as the power to make a "direction" rather than an order that the withdrawn complaint(s) be investigated. While the police complaint commissioner has the power to order an investigation in s. 55(3), there seems no good reason to confuse anyone's perception of the overriding nature of the police complaint commissioner's oversight powers by diluting the language with which those powers are described.

84. The second issue is that, in my view, s. 52.2 should provide the discipline authority with an express power to continue to process a complaint notwithstanding that a notice of withdrawal has been filed. While such a power might be inferred from the conditional language of s. 52.2(9), an ambiguity arises from the fact that, at present, the only power to "direct" that a complaint continue to be processed in such circumstances resides with the police complaint commissioner under ss. 52.2(7).

85. The power of the police complaint commissioner to intervene at any stage of the complaint process is a power that flows from the oversight mandate of that office. As long as the power to investigate police complaints remains with the police, the first responsibility to maintain the integrity of the complaint process must necessarily rest with the discipline authorities who, accordingly, must have the unambiguous powers necessary to discharge that responsibility.

86. Accordingly, I recommend that s. 52.2 be amended by adding an express provision to the effect that notwithstanding that a notice of withdrawal has been filed, the discipline authority may continue to process a complaint. I see no reason to curtail this authority with any limiting conditions on its exercise anymore than the legislature saw fit to limit the discretion of the police complaint commissioner to make directions, including directions to conduct an investigation, notwithstanding that a notice of withdrawal was made without duress.

87. Further, I recommend that ss. (6) and (7) be collapsed into one subsection that provides simply that where the police complaint commissioner determines the notice of withdrawal was not made under

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[38] See: paragraphs 207-208.

duress, he may nonetheless provide directions to the discipline authority with respect to the complaint or order the discipline authority to conduct an investigation into the complaint.

88. The audit sample of both lodged and non-lodged complaints revealed a small number of complaints that did not fall under the jurisdiction of Part IX. Typically this was because either the individual, whose conduct was the subject of the complaint, was not a municipal constable, chief or deputy chief constable, or the subject matter of the complaint did not fall within the definition of any of the three types of complaint covered by Part IX. Currently, there is no provision in the *Act* which would enable this type of complaint to be quickly and efficiently concluded. Accordingly, I recommend that Division 3 of Part IX be amended by adding a section which gives the police complaint commissioner the power, upon consultation with the discipline authority, to dismiss any complaint that for whatever reason is not subject to the Part IX complaint process.

VI. DIVISION 4 - PUBLIC TRUST COMPLAINTS

A. APPLICATION OF THIS DIVISION TO THIRD PARTY COMPLAINANTS

89. At present, third party complainants are not considered "complainants" for any purposes under Part IX (s. 53) and they have none of the rights available to complainants under Division 4 except the right to be informed of discipline proceedings or criminal charges that result from their complaints (s. 53.1(1) and (2)). In his review of Part IX, completed shortly after it came into effect, Professor Stenning expressed the view that these limitations represented a "significant weakness" in the legislation.[39]

90. In his White Paper the police complaint commissioner suggests a limited easing of these limitations. Acknowledging that there are some instances in which third party complainants have a "legitimate interest" in pursuing a complaint on behalf of another, he proposes that both his office and an adjudicator presiding over a public hearing be provided with a discretion to grant rights to a third party complainant up to but no greater than those that are or, in the case of a public hearing would be, made available to a complainant.[40] The discretion proposed could only be exercised in circumstances where "good cause exists" and the extension of such rights "would not unduly prejudice a respondent".[41]

91. In its response to the White Paper the BCAMCP suggests, without being specific, that the test for exercising this proposed discretion should be considerably "more onerous" than that proposed in the police complaint commissioner's draft legislation.[42] The Association also recommends that corporate persons or associations and other "non-individuals" should be denied third party status altogether.

92. The BCCLA on the other hand, together with the Pivot Legal Society and some complainants interviewed, urge full participatory rights for third party complainants. In a written submission offered in response to the police complaint commissioner's White Paper, the BCCLA argues, as did representatives of that Association who met with us, that such an equal role is consistent with the remedial objective of the Part IX complaint process, which is to correct or discipline police misconduct and not to provide compensation to complainants who may have suffered from such misconduct.[43]

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[39] Supra note 31, pp. 9-10.

[40] Supra note 9, p. 14.

[41] See: Section 20(1) draft Police Complaint Act.

[42] Supra note 8, p. 11.

[43] Correspondence dated May 12, 2006, from Executive Director of BCCLA to Dirk Ryneveld, Q.C.

93. I agree with the views expressed by Professor Stenning in his 1998 review of Part IX,[44] which he reiterated in his testimony before the Special Committee of the Legislature in 2001.[45] The limitation on the right of third party complainants, to participate fully in the complaint process, operates to prevent access to that process by those who lack the psychological, social, educational or financial resources to pursue such complaints on their own behalf. The Core Area Survey results demonstrate that those who suffer from such disadvantages are less likely than others in our society to be aware of, understand or avail themselves of the right they have to lodge a complaint against what they perceive to be police misconduct. Common sense, mixed with a modicum of life experience, tells us that they are the very constituency who are at greater risk of such misconduct.

94. The extent to which, as a society, we are able to ensure that the most vulnerable among us enjoy the benefit of those values which we consider fundamental to a free and democratic society, is the measure by which our commitment to those values will be measured. As noted at the outset of this report,[46] freedom from police misconduct, which necessarily requires a commitment to effective civilian oversight of the exercise of police powers, is one of those fundamental values.

95. In his White Paper the police complaint commissioner expresses the concern that full participatory rights for third part complainants "has the potential to add cost, prejudice to respondents and commission counsel, and even mischief to a fair and efficient complaint process."[47] This thought is picked up in the submission of the BCAMCP, made in response to the White Paper to which is added a concern that equal participatory rights to third party complainants will lead to "increased delay and unnecessary procedural complexity, which may impact the timely resolution of complaints."[48] No specific examples of these potential consequences and, in particular, no historical examples of their occurrence, are offered in support of these concerns and the audit results do not support their existence.

96. Only 15 of the 294 complaint files audited were third party complaints. There is no reason to think that this low number is the result of a widespread understanding in the community at large of the strictures placed upon third party complainants in s. 53.1. Thus, while the overall incidence of lodged public trust complaints will likely increase over time, and may increase if a number of the recommendations contained in this report are implemented, there is no reason to think that the increase in third party complaints will be disproportionate.

97. The assumption that seems to underlie the concerns expressed by both the police complaint commissioner and the BCAMCP in its response to his White Paper, is that a significant number of such complaints will be advanced by improperly motivated complainants. As Professor Stenning points out in his 1998 Review of Part IX,[49] no such assumption is reflected in s. 52(1) which gives the right to file a complaint to any person, and there seems to be no compelling reason to impose such an assumption on third party complainants. In fact, from a review of the audit notes relating to the 15 third party complaints included in the review, it was not apparent that any were lodged by improperly motivated complainants.

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[44] Supra note 31.

[45] British Columbia, Legislative Assembly. Hansard. (November 19, 2001). "Special Committee to Review the Police Complaint Process." p. 54.

[46] See: paragraph 33, infra.

[47] Supra note 9, p. 15.

[48] Supra note 9, p. 11.

[49] Supra note 31, pp. 9-10.

98. That said, I cannot rule out the possibility that increased participation by third party complainants may increase the risk of such improperly motivated complaints. However, in my view, that contingency can be met by providing the police complaint commissioner with the discretion to conclude a third party complaint summarily, the exercise of such discretion being based upon and supported by cogent evidence that satisfies him that such complaint was improperly motivated. In addition, the police complaint commissioner must have the authority to order the summary dismissal of a third party complaint in the event either that more than one such complaint is lodged in connection with the same allegation of misconduct or that the member of the public directly affected by the alleged conduct in question subsequently lodges a complaint under s. 52 of the *Act*.

99. Accordingly, I recommend that necessary amendments be made to Division 4 to eliminate the existing limitations on the right of third party complainants to the same participation in the Part IX complaint process as first party complainants. However, in order to ensure that the right of third party complainants to such full participation is not abused, I recommend that the police complaint commissioner have a discretionary power, either upon application by the discipline authority concerned or on his or her own motion, to order that the investigation into a third party complaint be discontinued and the complaint summarily dismissed upon evidence which establishes on a balance of probabilities that such complaint has been advanced for reasons other than a genuine belief on the part of the third party complainant that the conduct complained of amounted to a breach of the *Code of Professional Conduct*. In addition, I recommend that the police complaint commissioner have the authority to order the summary dismissal of a third party public trust complaint in the event that one or more members of the public directly affected by the alleged conduct in question subsequently lodges a complaint under s. 54 of the Act. If accepted, these latter two recommendations should properly be located as part of the present s. 54 which provides for summary dismissal of complaints.

B. RESIGNATION, RETIREMENT OR TRANSFER

100. Part IX is silent with respect to the continued application of the complaint process to a respondent officer who resigns, retires or transfers to another police department either before a complaint is lodged or while a complaint is outstanding.

101. The Special Committee of the Legislature heard from a number of sources on this issue and recommended that any complaint process lodged against such an officer be "concluded and recorded."[50] The police complaint commissioner, in s. 21 of his draft Police Complaint Act, has fleshed out this recommendation, dealing separately with the issue of transfer, but his recommendation does not clearly differentiate between the situation where the public trust complaint arises after the resignation, retirement or transfer and that where the complaint process is ongoing when the respondent decides to make a career change.

102. Dealing first with the situation where the employment status of a respondent changes in the face of an ongoing public trust complaint, different issues arise with respect to resignation or retirement on the one hand and transfer on the other. In case of the former, the concern is that resignation or retirement will be used as a device to enable the respondent to then obtain employment with another police department, without a record of discipline associated with the complaint that, under the current structure of the *Act*, must be abandoned because there is no statutory authority for it to continue to be processed. In the case of transfer, the statutory void has left the police departments, both from and to

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[50] Supra note 4, p. 22. See also Special Committee recommendation 41.

which the respondent has transferred, without any apparent authority to continue with the complaint process.

103. The concern in both cases is to ensure that a respondent's service record of discipline contains a complete record of all complaints that have resulted, or could have resulted, in corrective and/or disciplinary measures being imposed, including any such complaint being processed at the time of the resignation, retirement or transfer, such that any police department which may subsequently receive an application for employment is made fully aware of the respondent's full disciplinary history.[51]

104. The brief of the BCAMCP suggests that there will be occasions in which it is in everyone's interest that an opportunity to resign be afforded to a respondent who faces a clear likelihood of serious disciplinary action, rather than forcing everyone to complete the Part IX complaint process. The example offered is a respondent:

> ...who has engaged in serious misconduct and is facing dismissal [who] may choose to resign in the face of public exposure even where it is uncertain the evidence is sufficient to meet the test of dismissal. Facing the certainty of a public hearing may operate as a disincentive.[52]

105. With respect, the position of the BCAMCP, as reflected in this example, overlooks an important principle. Either the public trust default giving rise to the complaint against a respondent can be proved on the requisite standard of a balance of probabilities, or it cannot. If not, there is no reasonable basis upon which it can be suggested that the respondent's potential future career as a police officer should be blemished by a resignation induced by a desire to avoid public exposure. On the other hand, if the proof is there, a resignation or premature retirement ought not to permit that respondent to move on to another police department with an apparently clean discipline record. While it might be argued that, where it can be said with certainty a respondent will not seek employment with another police department, he or she ought to be allowed to resign or retire without the necessity of completing the complaint process through to its statutory conclusion, the problem will always be ensuring that such certainty exists.

106. Accordingly, I am of the view that resignation or retirement should never interfere with the ability of a police department to continue processing a public trust complaint against a respondent. Thus, what is needed is the statutory obligation to continue that process against a former municipal constable, chief or deputy chief constable, who resigns or retires in the face of an outstanding public trust complaint. The respondent who resigns or retires in those circumstances can choose either to participate or not in the continued complaint process, but if he or she chooses not to participate there should be a statutory adverse inference available to the discipline authority or adjudicator, as the case may be, who has the final responsibility to deal with that outstanding complaint. As well, in such circumstances, the respondent should be deemed to have waived his or her right to request either a public review,[53] or a public hearing, following a discipline proceeding at which the complaint is found to be substantiated.

107. Turning to the situation where an officer transfers to another police department in the face of an outstanding public trust complaint, I am also of the view that the police department from which that

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[51] See: paragraph 153, infra, where I recommend that s. 65.3 be amended to provide, *inter alia*, that the chief of a police department to which a current or former municipal police officer makes application for employment, be entitled to receive, on request, a copy of that officer's service record of discipline.

[52] Supra note 8, p. 12

[53] See: paragraphs 292-296, infra.

respondent has transferred must complete the Division 4 process and, if the complaint is substantiated, so record that result in the respondent's service record of discipline.

108. Obviously, in the case of resignation, retirement or transfer, the ability to impose corrective and or disciplinary measures upon someone who is no longer an employee does not exist. Thus, in each case, the disciplinary process will conclude with the determination whether the complaint was substantiated. However, if the complaint is found to be substantiated, there should be a statutory duty on the part of the discipline authority or the adjudicator, as the case may be, to indicate what corrective and/or disciplinary measures would have been imposed in the event the respondent was still employed by that department.

109. The situation is more complex where the public trust complaint is not lodged, and therefore does not come to light, until after the respondent has resigned, retired or transferred to another police department. If I understand the proposal in s. 21(2) of the police complaint commissioner's draft Police Complaint Act, in the case of a transfer he would impose the responsibility for investigating and otherwise processing that complaint upon the municipal police department of which the respondent is then a member. I think that is the only sensible way of dealing with the situation, irrespective of whether the respondent's employment at the time the complaint is lodged is a result of a straightforward transfer or an application for employment following a resignation or retirement from the police department in whose employ he or she was when the conduct complained of occurred.

110. Accordingly, I recommend that a section be added to Part IX to provide:

(a) Where a respondent resigns, retires or transfers to another police department, while facing an outstanding public trust complaint, the discipline authority shall continue to process the complaint as though the respondent were still a member or the department and, in the event the complaint is substantiated following a discipline hearing, a public review or a public hearing at which the respondent is afforded full opportunity to participate, the discipline authority or adjudicator, as the case may be, shall record that result in the respondent's service record of discipline together with the corrective and/or disciplinary measure that would have been imposed had the respondent still been an employee of that police department.

(b) The disciplinary authority may draw an adverse inference against a respondent who resigns, retires or transfers to another police department, while facing an outstanding public trust complaint, and who elects not to participate in a discipline proceeding arising out of such a complaint.

(c) A respondent who resigns, retires or transfers to another police department, while facing an outstanding public trust complaint, and who elects not to participate in a discipline proceeding with respect to that complaint, shall not be entitled to request either a public review or a public hearing in the event the complaint is found to be substantiated.

(d) Where a public trust complaint is lodged against a respondent who, since the events giving rise to the complaint but before the complaint was lodged, whether by reason of a resignation, retirement or transfer, is then employed by a different municipal police department, that complaint must be processed under Division 4 of Part IX by the municipal police department of which the respondent is then a member.

C. SUMMARY DISMISSAL OF PUBLIC TRUST COMPLAINTS

111. It is recognized by all stakeholders, and others familiar with the police complaint process generally, that there will inevitably be some complaints of police misconduct which have no merit whatsoever, either because they are completely without any legal or factual foundation or they lack any air of reality. Section 54 of the *Act* is intended to give the discipline authority the power to dismiss such complaints without the necessity of wasting scarce police resources on their investigation.

112. There is no question that such a summary dismissal power is required as an integral part of the Division 4 process. However, the review revealed a significant degree of inconsistency, across the eleven municipal departments, in the use of s. 54(1)(b), as well as some degree of confusion with respect to both when and how it should be used.

113. A total of 85 public trust complaints, out of the main sample of 294 complaint files, were ultimately concluded as summarily dismissed. Of those, six were found to be frivolous or vexatious, four were found to relate to an act or omission that had occurred more than 12 months before the complaint was filed and the balance (75) were concluded under s. 54(1)(b) on the basis that there was no reasonable likelihood that further investigation would produce evidence of a public trust default.[54]

114. Resort to s. 54(1) generally, by municipal departments, ranged from 0% to 78% of all dispositions recorded in the audit sample, with one department utilizing s. 54(1)(b) in 57% of all dispositions recorded in its share of the audit sample.[55] Both the administrative and investigative audits revealed numerous instances where the disposition was formally recorded as a summary dismissal, under s. 54(1)(b), while the language in which that disposition was described in the final investigation report was consistent with a conclusion that the complaint was, in fact, found to be unsubstantiated. In many of such cases substantial investigative steps had been undertaken and, in some cases, what was apparently a full investigation had actually been conducted.

115. From the perspective of a complainant, the only recourse following a summary dismissal is to apply to the police complaint commissioner for a review of that decision,[56] something the police complaint commissioner is statutorily bound to do in any event.[57] If such a review persuades the police complaint commissioner the complaint should not have been summarily dismissed, he may issue an order under s. 54(6)(a)(ii) that it be investigated. By contrast, when a complaint is found to be unsubstantiated, the complainant may request the police complaint commissioner to order a public hearing,[58] or the police complaint commissioner, on his own motion, may order such a hearing. The different consequences flowing from these different dispositions mandate that the formal disposition of a complaint accurately reflect the true basis upon which that complaint has been concluded.

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[54] See: Sections 2.5 and 5.1 of the Administrative Audit Report, Appendix, B. One service or policy complaint was also summarily dismissed.

[55] The weight to be attached to the fact that no summary dismissals were recorded in the audit files received from two departments is almost certainly the result of the small number of files from those departments in the random sample. As well, little weight should be attached to the 78% rate in one department which had only 9 files in the random audit sample. However, the 57% frequency in one department is a clear anomaly. When that department's numbers were removed, 23% of the remaining public trust complaints in the audit sample were summarily dismissed.

[56] Supra note 1. See: s. 54(4).

[57] Ibid. See: s. 54(6).

[58] Ibid. See: s. 57.1(3).

116. In addition to the audit results, which demonstrate a widespread failure to understand the proper use of the summary dismissal power in s. 54(1)(b),[59] the investigative audit team concluded that 11 of the 75 public trust complaints, in which a summary dismissal was formally recorded under that statutory provision, ought to have been fully investigated because the investigative file did not reveal a reasonable basis for concluding that further investigation would not produce evidence of a public trust default. While one cannot conclude that any of these complaints would have been substantiated, if a full and proper investigation had been conducted, the failure to conduct an adequate investigation renders the disposition of these files unsatisfactory.

117. It would also seem that the scope of the s. 54(1)(a) power to summarily dismiss a complaint is not clearly understood. This was confirmed by a number of professional standards officers and discipline authorities we interviewed who expressed frustration at their inability to deal quickly and effectively with what they viewed as frivolous or groundless complaints. One department, in a written submission prepared in response to this review, went so far as to suggest that "patently frivolous" complaints should be "refused" without the need to make a formal dismissal ruling.[60]

118. The Special Committee of the Legislature recommended that s. 54(1)(a) of the *Act* be amended "to replace 'frivolous and [sic] vexatious' with plain language."[61] It is perhaps difficult to conceive of any "plain language" which could more clearly reflect the legislative intent underlying s. 54(1)(a) than "frivolous **or** vexatious." With respect to both the Special Committee of the Legislature, and those to whom we spoke during interviews, who suggested that the words "frivolous or vexatious" have an inflammatory tone which adds to the dissatisfaction of a complainant whose complaint is thus dismissed, I am not persuaded that they should be removed from s. 54(1). Those words clearly describe two distinct types of complaints which can and should be summarily dismissed. As noted in the undated Practice Directive on Summary Dismissal, issued by the office of the police complaint commissioner, a complaint is frivolous when, on its face, (i.e. without the need for any investigation whatsoever) it is devoid of substance and/or lacks an air of reality. The word vexatious, in the context of s. 54(1)(a) speaks to the motivation of the complainant and imports the concept of repetitious similar complaints that have previously been found unsubstantiated.

119. However, the evidence accumulated during the review indicates the need to clarify the language of s. 54(1)(b) so that the purpose and scope of the important power it contains can be more clearly understood and properly utilized. The singular feature of the complaints referred to in s. 54(1)(a) is that their deficiencies will be apparent without the need for any investigation whatsoever. That is clearly not the case with the complaints to which s. 54(1)(b) was intended to apply. The underlying assumption supporting the power to summarily dismiss found in that subsection is that there will be some complaints which, while unremarkable on their face, will nonetheless subsequently be determined to be groundless. When s. 54 as a whole is read together with s. 54.1(1), it is clear that such a determination, if appropriate, would most likely become obvious very early in the investigative stage. As well, it is manifest that a summary dismissal must not result from a weighing of the evidence for or against the substance of the complaint. Rather it must be based upon some circumstance which makes that process unnecessary. If the evidence must be weighed, the proper disposition of the complaint

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[59] The audit templates were not designed to record the number of public trust complaints that ought to have been formally recorded as unsubstantiated rather than summarily dismissed.

[60] Delta Police Department. (April 6, 2006). "Section 42 Review of the Police Complaint Process." p. 2.

[61] Supra note 4, p. 12. See also Special Committee recommendation 7.

must necessarily be made under s. 57.1(1). Finally, s. 54(1)(b) must not be used to summarily dismiss a complaint following a selective and incomplete investigation.

120. With the foregoing in mind, I am of the view that s. 54(1)(b) was intended to enable the summary dismissal of a complaint that, on its face, was neither frivolous nor vexatious, but that, nonetheless, for some clearly identifiable, legal or factual reason could never be substantiated. Its purpose was to avoid the waste of time and resources that would otherwise be spent in the investigation, or further investigation, of a public trust complaint that, in any event, must inevitably be concluded as unsubstantiated. While it is perhaps difficult to imagine a circumstance where such a complaint might not also fit the definition of a frivolous complaint, it is impossible to say it could never happen. Suffice it to say that the circumstances in which such a power of summary dismissal could properly be invoked would be rare.[62]

121. Accordingly I recommend that s. 54(1)(b) be amended to reflect that a public trust complaint can be summarily dismissed when there exists either a legal or a factual reason why it cannot possibly be substantiated such that any, or any further, investigation of the complaint is unwarranted.

122. In keeping with my general view that the entire complaint process should be completed in a more timely fashion, I recommend that the 10 business day period which the discipline authority has to notify the parties and the police complaint commissioner of a decision to summarily dismiss a complaint, found in s. 54(3), be amended to require that such notice be given forthwith upon that decision. Notwithstanding some concerns expressed during interviews, I am of the view that, given the work load in that office, the 30-day period provided to the police complaint commissioner to review such a decision in s. 54(6) is reasonable.

123. In the course of the many interviews we conducted, we were made aware of the fact that in each of the municipalities there are one or more individuals who are perpetual complainants. Many of their complaints are summarily dismissed after little investigation, but some are dismissed only after at least some investigation. We were told that the amount of time taken up by processing such complaints puts a serious strain on already scarce investigative resources, especially in those municipal police departments that are not large enough to have a full time professional standards officer. In his draft Police Complaint Act,[63] the police complaint commissioner has suggested a process whereby his office could order that further complaints of a person who has habitually instituted vexatious or groundless complaints not be processed.

124. The audit revealed that such complainants do exist and, while their number may not be large, I think the police complaint commissioner's suggestion is a sensible one and justifies a recommendation that a provision similar to s. 18 of the *Supreme Court Act* be included within s. 54 of the *Act*:

> 18. If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.[64]

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[62] One example might be an abuse of authority complaint, based on an allegation of unlawful search and seizure, where it was determined either that a Warrant to Search had been issued or the complainant was properly arrested or detained, thus giving the respondent a common law power to conduct a warrantless search of the complainant.

[63] Supra note 10. See: s. 15(8).

[64] R.S.B.C 1996, c. 443 and amendments thereto.

125. There is, of course, a risk of abuse resulting from such an order, arising from the fact that even a perpetual nuisance complainant may experience police misconduct. Thus, any power to make an order of the sort recommended should necessarily be rarely exercised and then only after it could be demonstrated on clear and convincing evidence to be necessary. In other words, I am of the view that there must be a high evidentiary standard met before such an order could be made, and that such standard should be clearly spelled out. Further, as a safeguard against any possible abuse, there must be an opportunity given to the individual in question to persuade the police complaint commissioner that a proposed complaint ought to be processed in the ordinary way.

126. Accordingly, I recommend that a section be added to Division 4 giving the police complaint commissioner the power, upon application by a discipline authority, to make an order that no further complaints from an individual complainant be lodged for processing under Division 4 of the *Act* without leave of the police complaint commissioner. The order can only be made after giving the individual complainant an opportunity to be heard, and must be based upon proof that such individual has previously made at least two complaints that have been summarily dismissed as frivolous or vexatious. Further, I recommend that any individual against whom such an order has been made shall have the right to apply to the police complaint commissioner to have such an order vacated.

D. INFORMAL RESOLUTION

127. The administrative audit portion of our review revealed that informal resolution was attempted in just 32 (or 11%) of the 294 complaint files in the random sample. Twenty-five of those attempts were "successful" to the extent that they resulted in the final disposition of the complaint. However, the investigative audit team concluded that, of those so-called successful resolutions, four ought not to have been the subject of an attempt at informal resolution as the complaints alleged were of too serious a nature to conform to the undated Practice Directive on Informal Resolution[65] issued by the office of the police complaint commissioner.[66] It was also noted that one such resolution did not conform strictly to the requirement, in s. 54.2(1)(a), that the respondent sign the letter consenting to the resolution of the complaint.[67] Thus, five of the 25 successful informal resolutions ought not to have been so concluded.

128. The investigative audit team also noted that one of the unsuccessful attempts at informal resolution did not conform to the Practice Directive on Informal Resolution because of the serious nature of the discipline default alleged.[68]

129. My review of the investigative audit team's notes in respect of the 294 files in the audit sample persuades me that informal resolution would have been appropriate, and should at least have been attempted, in 96 of the complaints in those files. That number, of course, includes the 27 files in which informal resolution was properly attempted.[69] In other words, informal resolution should have been attempted in almost 33% of the total number of files reviewed. However, it was properly attempted in only 28% of the complaints contained in those files in which it ought to have been attempted and successfully concluded in only 20% of those files.

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[65] Supra note 17.

[66] Of the 4, 3 alleged the disciplinary default of Abuse of Authority in the form of excess force and 1 alleged deceit by misleading the Court.

[67] The respondent's supervisor apologized and signed the letter after advising the complainant that the respondent refused to apologize.

[68] This complaint was subsequently found to be unsubstantiated, but the investigative audit team concluded that disposition was the result of an improper legal analysis and that the complaint ought to have been concluded as substantiated.

[69] The informal resolution that did not conform to the requirements of s. 54.2(1)(a) of the Act was nonetheless properly attempted.

130. Section 54.1(1) of the *Act* mandates that, unless a complaint is summarily dismissed, the discipline authority must, promptly after receiving a complaint, determine whether an informal resolution of the complaint would be appropriate. The audit revealed that, with the exception of those departments in which the chief constable retained the role of discipline authority, there was no clear evidence that the discipline authorities systematically complied with this statutory requirement. By way of a general observation, the audit revealed that, in the overall complaint process, not much attention is paid to, nor use made of, the provisions of s. 54.1.

131. Interviews conducted during the review revealed what may be one reason for the lack of resort to informal resolution. We were repeatedly told by discipline authorities, professional standards officers and, indeed, by union representatives, that for the most part respondent police officers refused to attend an informal resolution attempt because they believe they have done nothing wrong. The extent to which this negative approach to the concept of informal resolution is, in fact, pervasive among police officers, may be one explanation for why it is that some discipline authorities have not discharged the duty mandated by s. 54.1(1) of the *Act* in many of those cases in which informal resolution ought to have been, but was not, attempted. It certainly explains why the undated Practice Directive on Informal Resolution provides for a formal apology to be made on behalf of the police department rather than by the actual respondent against whom a complaint has been lodged, a practice that is not sanctioned by ss. 54.1 or 54.2.

132. In fairness, the interview process also brought to our attention examples where complainants were unwilling to engage in an attempt at informal resolution. While the self-selection process by which we were given the opportunity to interview both respondents and complainants necessarily lessens the weight to be attached to such evidence, there is no reason to think that the concept of informal resolution would necessarily be unanimously endorsed by all members of the public whose complaints are of the sort deemed suitable for such resolution.

133. A further reason why informal resolution has not been attempted as often as it should have, may be due to the fact that most discipline authorities and professional standards officers have little, if any, dispute resolution training or experience. Again, through the interviews we conducted, it became apparent that, to the extent such training is available in the Justice Institute or elsewhere, generally speaking, resources are not made available for officers to avail themselves of such training. One professional standards officer, who had received alternative dispute resolution training, advised that he was actually required to pay for such training himself and to attend the course during his off-duty hours.

134. While not all of those complaints eligible for such resolution would necessarily be successfully resolved if the attempt were made, it is significant that 20 out of 27 proper attempts at informal resolution in the audit sample ultimately proved successful. A 74% success rate even in a sample so small, is reason to be optimistic about the results that could have been achieved if informal resolution had at least been attempted in the one-third of all complaints in the sample for which it was an appropriate option. As noted, informal resolution was properly attempted in only 27 of the 96 complaint files in the audit sample deemed suitable for such a resolution. Applying a 74% success rate to the remaining 69 suggests that up to 51 investigations by municipal professional standards officers, followed by consideration and adjudication by discipline authorities and then a review of the investigation by staff members at the office of the police complaint commissioner could potentially have been avoided. For every successful such attempt, scarce police and oversight resources could more effectively have been deployed by turning their attention to the more serious complaints that warranted closer scrutiny.

135. It is obvious that ss. 54.1 has not been successful in achieving its stated objective. From the information gathered during our review, it appears that the principal reasons for this are the failure of discipline authorities to discharge their mandate under ss. 54.1(1) and (3) and the requirement in s. 54.1(4) that both parties consent to such a procedure. Accordingly, it is necessary to consider whether some form of mandatory informal resolution process should be included in Part IX and, if so, how resort to such a process should be managed.

136. In Quebec, the Commissioner of Police Ethics has the power to decide whether a particular complaint is suitable for mandatory conciliation. In evidence given before the Special Committee of the Legislature in 2002,[70] Commissioner P. Monty testified that 30% to 35% of all complaints are referred by him to conciliation and 85% of those are successfully resolved. The cost of conciliation, and the cost of a subsequent investigation if the conciliation is unsuccessful, are borne by the police department of which the respondent officer is a member.

137. No other provincial police complaint process in Canada presently includes any form of mandatory informal resolution process. However, the BCAMCP, in its submission to the Special Committee of the Legislature, cited the Quebec model as an example and recommended mandatory alternative dispute resolution for certain cases.[71] The model in that proposal was that the chief constable would make the initial determination whether a complaint would be appropriate for alternate dispute resolution and then refer the complaint to the police complaint commissioner who would then have the power to order the parties to attend and attempt some unspecified form of alternative dispute resolution.

138. In its more recent brief, prepared in response to the police complaint commissioner's White Paper, the BCAMCP describes "ordered mediation" as "counter-intuitive" suggesting that rather than ordering the parties to mediate, mediation be required as a prerequisite to proceeding with any further procedural steps in connection with a complaint.[72]

139. In his White Paper, the police complaint commissioner recommended mandatory mediation which, in s. 15 of his draft Police Complaint Act, he suggested would be ordered by his office in any given case. However, in his Green Paper,[73] he accepted the suggestion of the BCAMCP that complainants should not be forced into a room to mediate a dispute. Instead he proposed that where the police complaint commissioner determines that a case is proper and suitable for informal resolution, the complainant should be advised that the complaint process "will not continue" unless and until he or she attends a mediation process with the respondent.

140. With respect, I do not see the "subtle" distinction between ordering a complainant to attend a mediation and ordering that the complaint not be processed unless and until the complainant attends a mediation. Furthermore, the thrust of the proposal in the police complaint commissioner's Green Paper appears to suggest that unwilling complainants are the explanation for the infrequent resort to informal resolution observed by the audit process conducted in our review. As noted, apart from what we heard from a few former complainants who we interviewed, the preponderance of evidence accumulated during the review suggests that the major impediment to informal resolutions has been the refusal of many respondents to consent to such a process.

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[70] British Columbia, Legislative Assembly. Hansard. (May 10, 2002). "Special Committee to Review the Police Complaint Process." pp. 446-8.

[71] BCAMCP. (January 2002) *Submission to Special Committee to Review the Police Complaint Process*, January 2002, p. 3; and British Columbia, Legislative Assembly. Hansard. (February 11, 2002). "Special Committee to Review the Police Complaint Process." pp. 190-1.

[72] Supra note 8, pp. 12 and 14.

[73] Ryneveld, Dirk, Q.C. (August 2006). *Reform of the Police Complaint Process: Supplementary Report of the Police Complaint Commissioner*. p. 13. (Hereinafter the "Green Paper").

141. Furthermore, I see no reason why it should be the police complaint commissioner who determines, in the first instance, whether a complaint is suitable for ordered mediation. The *Act* presently charges the discipline authority with the responsibility of promptly identifying those complaints which are suitable for informal resolution. That statutory duty recognizes the fact that the discipline authority is initially in the best position to make that judgment. Logic suggests the same is true with respect to the determination whether the attempted informal resolution should take the form of an ordered mediation. While our review did not reveal much evidence of compliance by discipline authorities, other than chief constables, with the mandatory requirements of ss. 54.1(1) and (3), the interviews we conducted suggested that phenomenon was largely the result of the refusal of respondents generally to consent to any informal resolution procedure. If respondents can be ordered to attend and participate in an attempt at informal resolution, that difficulty will be overcome, and there is then no reason to expect other than that discipline authorities will discharge the duties expected of them under ss. 54.1(1) and (3). Accordingly, I am of the view that the discipline authority should be responsible for making the initial assessment whether a particular complaint is a suitable candidate for ordered mediation. However, as the police complaint commissioner will have shared responsibility for the process I recommend, it makes sense that the discipline authority's determination be confirmed upon consultation with the police complaint commissioner.

142. Finally, I am not satisfied it would be appropriate for the police complaint commissioner to be vested with the power to order the respondent to attend and participate in an ordered mediation. In my view, the normal chain of command in a municipal police service should be respected. In that chain of command, the only person who has the authority to order a municipal constable to do anything is a superior officer. As is the case with the initial determination whether a complaint is suitable for ordered mediation, I believe the discipline authority is the appropriate authority to order a respondent to attend and participate in such a process.

143. However, I do agree that there has to be some means by which the unwilling complainant will be persuaded to participate in an ordered mediation. I also accept that the only means by which such persuasion can be effected is to provide that once the discipline authority, upon consultation with the police complaint commissioner, determines that an ordered mediation is appropriate, the complainant should be advised that no further steps will be taken to investigate the complaint until both parties have participated in such a process.

144. In my view the police complaint commissioner is the proper person to oversee the process by which a complainant is thus forced to attend an ordered mediation. In order to ensure that a complainant, who has a legitimate reason not to participate in an ordered mediation, is not forced to do so, it should be the police complaint commissioner who issues the requisite notice to the complainant to attend and, through that notice, advises of the consequences of failing to participate. In that way, a complainant who has reason to do so will have an opportunity to persuade the police complaint commissioner that his or her failure to attend ought not to interfere with the complaint going forward to investigation. In the event a complainant fails to attend an ordered mediation, the police complaint commissioner should have the discretion to order the complaint be dismissed.

145. Finally, notwithstanding the failure of a complainant to participate in an ordered mediation, with or without justification for doing so, there must be a residual discretion in the police complaint commissioner, upon consultation with the discipline authority, to order an investigation into a complaint be undertaken or continued, as the case may be, under Division 4.

146. One absolutely fundamental precondition to adopting mandatory or ordered mediation as a means by which a public trust complaint can be informally resolved, is that such mediations must be conducted by trained and independent mediators, preferably those who have some background and familiarity with Part IX and policing in general. Under s. 54.1(8) of the *Act*, the police complaint commissioner is presently mandated to complete a roster of such mediators. I see the fulsome discharge of that mandate as essential to the success of any form of mandatory mediation that may be adopted.

147. The final question that necessarily arises is who shall bear the costs of a mandatory mediation process. In the draft Police Complaint Act, attached to his White Paper, the police complaint commissioner has suggested that the cost of such a mediation be paid by the municipality out of which the complaint arises.[74] Both the municipal police department and the office of the police complaint commissioner stand to benefit from any mediation that proves successful. Thus, an argument can be made that the cost of a mandatory mediation should be borne equally by both offices. However, measuring the financial cost and consequences of such a process are beyond the scope of this review. Thus, I would leave the determination of where the ultimate cost burden should lie to those who are in the best position to make that delicate decision.

148. With all the foregoing in mind, I recommend that appropriate amendments be made to s. 54.1 to reflect the following:

   (a) Where the discipline authority determines that informal resolution of a complaint would be appropriate, the discipline authority shall first try to obtain the consent of both the complainant and the respondent to engage in such a procedure.

   (b) If the consent of both parties is forthcoming, the discipline authority may engage either or both of the procedures described in s. 54.1(5).

   (c) Section 54.1(4) should be repealed.

   (d) If the consent of either or both parties is not forthcoming, and the discipline authority is of the view that ordered mediation would be appropriate, the police complaint commissioner must be so advised.

   (e) If, after consultation with the discipline authority, the police complaint commissioner agrees that ordered mediation of the complaint is appropriate:

      (i) the police complaint commissioner shall order that any, or any further, investigation of the complaint be suspended pending the outcome of the mediation;

      (ii) the police complaint commissioner shall appoint a mediator;

      (iii) the discipline authority shall order the respondent to attend at and participate in the mediation at a time and place to be determined by the mediator;

      (iv) the police complaint commissioner shall order the complainant to attend at and participate in the mediation at a time and place to be determined by the mediator, and shall advise the complainant both that further investigation of the complaint is suspended pending the outcome of the mediation and that failure to attend the mediation may result in the complaint being dismissed. The notice should further provide that if the complainant has good reason not to attend the mediation, he or she can apply to the police complaint commissioner to be relieved of the requirement to attend;

      (v) if the police complaint commissioner is satisfied that the complainant has a justifiable reason for not attending a mediation, the police complaint commissioner shall so advise the discipline authority, the suspension of the investigation shall be lifted and the complaint processed in the ordinary way under Division 4 of the *Act*.

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[74] Supra note 10. See: s. 23(17).

(f) If the mediation does not result in resolution of the complaint, the police complaint commissioner shall lift the suspension of the investigation and the discipline authority shall promptly proceed to initiate, or continue with, as the case may be, an investigation into the complaint.

(g) If, notwithstanding the notice to the complainant, the complainant fails to attend the mediation, the police complaint commissioner in consultation with the discipline authority may order either that the complaint be dismissed, or that it be processed under Division 4.

(h) With appropriate consequential amendments, the substance of the balance of s. 54.1 should be retained.

149. Much of s. 54.2 is devoted to a formula by which either the complainant or the respondent can revoke their consent to an informal resolution and to the consequences that would flow from such revocation. The notion of a subsequent revoking of consent is inconsistent with the concept of a mediated settlement. Thus, in any case in which the parties, either by consent or by order, engage in a mediation, and thereby achieve a resolution of a complaint, the results should be considered final. Further, I am of the view that as long as the police complaint commissioner has an appropriate oversight power with respect to those informal resolutions which do not result from a mediation, there is no reason to give either party the option of revoking an informal resolution. Thus, I would recommend that s. 54.1 be further amended to provide that, in order to ensure that the guidelines for informal resolution are followed, the police complaint commissioner shall have the authority to make inquiries of the discipline authority with respect to any informal resolution other than one that has resulted from a mediation and, where for any reason he considers that such resolution was inappropriate, to order that it be set aside and the complaint processed under Division 4. If that recommendation is implemented, ss. 54.2(2), (3) and (4) can be deleted.

150. As it is presently worded, s. 54.2(5) indirectly authorizes the imposition of disciplinary action following an informal resolution. That authority should be explicit. As well, there is a conflict between s. 54.2(6), which provides that a complaint resolved by informal resolution must not be entered in the respondent's service record of discipline, and s. 65.3(1), which mandates that the service record of discipline of a respondent record the disposition in respect of all complaints against the respondent whether processed as a public trust or internal complaint.

151. Notwithstanding that informal resolution is a form of disposition limited to less serious complaints, there is no reason why corrective, or even disciplinary, action might not be appropriate following a successful informal resolution. The fact that instances of such outcome may be rare is no reason to clothe that possibility in the ambiguity of an inference. In my view, when corrective or disciplinary action is taken with respect to any complaint, no matter how it may ultimately be resolved, such action should be recorded in the respondent's service record of discipline. On the other hand, where a complaint is resolved without any corrective or disciplinary action being imposed, whether by some form of informal resolution or by way of summary dismissal or dismissal on the merits, there is no justification for recording either the complaint or that disposition in the respondent's service record of discipline. However, all complaints, irrespective of their disposition, will clearly be relevant to the management of the ongoing employment relationship and for that reason should be recorded in the respondent's personnel file.

152. Accordingly, I recommend that ss. 54.2(5) and (6) be amended to:

(a) confirm that corrective or disciplinary measures may be imposed by the discipline authority following an informal resolution, and

(b) that any complaint resolved by way of informal resolution, which does not result in corrective or disciplinary action, shall not be recorded in the respondent's service record of discipline, but shall be entered in the respondent's personnel file. A correlative amendment to s. 65.3(1) is required to ensure that no complaint that is informally resolved without subsequent corrective or disciplinary action, and no complaint that is finally either summarily dismissed or found to be unsubstantiated shall be recorded in a respondent's service record of discipline.

153. Since s. 65.3 has been referenced at this point, it is convenient to note another issue raised by several chief constables and discipline authorities, namely, the transferability of a service record of discipline. We were told that in some instances municipal police departments have experienced difficulty obtaining the service record of discipline of an officer who has applied to transfer from one department to another. Section 65.3(2) restricts access to a service record of discipline in such a way as to imply that disclosure to anyone other than the individuals therein listed is prohibited. Section 65.3(4) supports such a conclusion by speaking only of the internal use that may be made of a service record of discipline. In my view, a current or former municipal constable's service record of discipline should be made available, upon request, to the chief constable of any police service to which that current or former police officer has made an application of employment. Accordingly, I recommend that s. 65.3 be amended by adding thereto a further subsection which would clearly provide for that form of disclosure of a service record of discipline.

E. INVESTIGATION OF PUBLIC TRUST COMPLAINTS

154. The conduct of investigations into public trust complaints is referenced in ss. 55, 55.1, 55.2 and 56 of the *Act*. The direction provided by these sections is exclusively administrative in nature, dealing with such matters as timelines, the authority to order investigations, both internal and external, who shall conduct investigations and what reporting requirements accompany the conduct and conclusion of investigations.

155. The conduct of a thorough investigation involves the exercise of an uniquely human skill, one that is impossible to ensure or regulate through legislation. Thus, one would hardly expect Part IX to mandate the way in which investigations should be conducted. However, even the most dedicated and skilful investigator must have sufficient investigative powers in order to utilize that dedication and skill to maximum advantage. Part IX does not provide investigators with any special investigative powers. The audit results have demonstrated that some such powers are required.

156. In his White Paper, the police complaint commissioner has proposed a duty to cooperate with "the commissioner and with any complaints investigation"[75] and has offered specific details of what he sees as the appropriate scope of that duty in s. 14 of his draft Police Complaint Act. He suggests that such a duty can be found in other police complaint statutes,[76] and notes that in 2001 such a duty was urged upon the Special Committee of the Legislature by the BCCLA.[77] The BCAMCP, in their brief in response to the White Paper, supports such a duty but would focus the duty, at least initially, as one owed to the

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[75] Supra note 9, p. 12.

[76] See for example s. 113(9) of the *Police Services Act*, R.S.O. 1990, c. P.15 and amendments thereto.

[77] BCCLA (December 17, 2001). *B.C. Civil Liberties Association Submission to the Special Committee to Review the Police Complaint Process*; and British Columbia, Legislative Assembly. Hansard. (December 17, 2001). "Special Committee to Review the Police Complaint Process." pp. 98-99.

discipline authority rather than to the police complaint commissioner.[78] The Pivot Legal Society also supports a duty of cooperation and proposes specific and escalating penalties for respondents who do not cooperate promptly with interview and statement requests.[79]

157. As the recommendation of the Pivot Legal Society notes, the concept of a duty to cooperate is closely related to another subject which was explored extensively during the interview process, namely, the compellability of statements from respondents, an issue with respect to which the *Act* is silent.[80] An effort was made to address this void in the *Act* when, after extensive consultation with unions and police management, the office of the police complaint commissioner issued a Practice Directive on Statements on October 24, 2000.[81] It purported to mandate a duty to cooperate fully with investigators in the conduct of investigations of public trust complaints, but stopped short of requiring a respondent to provide a statement when called upon to do so. When read in its entirety, the so-called duty to cooperate in this Practice Directive extended no further than providing that, if they chose to do so, respondents could provide an investigator with a voluntary statement setting out their version of the subject matter of the dispute.

158. As the power of the police complaint commissioner to issue the Practice Directive on Statements was in considerable doubt, a joint submission by the Vancouver Police Union, the B.C. Federation of Police Officers and the Vancouver Police Officers Association urged the Special Committee of the Legislature to recommend that its content be incorporated into the *Act*.[82] Were such a recommendation to be implemented it would enshrine in the *Act* the right of a respondent not to cooperate with an investigation.

159. For the most part, the chief constables and deputy chief constables we interviewed were of the view that the *Act* should be amended to provide that both respondents and witnesses be compelled, when asked, to provide statements and to submit to interviews, providing it was clearly stipulated in the *Act* that they be entitled to seek and obtain advice before responding to such a request and that any compelled statements be admissible only in proceedings under Part IX of the *Act*. A similar view was expressed by over two-thirds of the professional standards officers we interviewed, with most of those who expressed opposition doing so on the ground they believe compelled statements to be of poor quality. In what seems to signal a positive reassessment of the issue, a significant majority of union representatives we interviewed also agreed, after some discussion, that a statutory requirement to provide a statement when called upon to do so would be acceptable as long as there were adequate statutory safeguards to ensure that any such statement could never be used outside of *Police Act* proceedings.

160. The audit results revealed a number of instances where respondent officers were requested either to provide a "duty report" or to answer questions, but where no response was in evidence in the investigative file. There were also some files in which a similar request to witness officers had apparently been made to no avail. While such cases were not common, they were in sufficient number to add substance to the view that the *Act* must be amended to provide both a duty to cooperate with an investigation and,

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[78] Supra note 8, pp. 9-10.

[79] Correspondence dated June 21, 2006, from Pivot Legal Society to Josiah Wood, Q.C.

[80] Section 61.1 of the Police Act deals only with compellability of "a municipal constable, chief or deputy chief constable" to make statements at internal discipline proceedings and public hearings and inquiries.

[81] Supra note 17.

[82] Vancouver Police Union, B.C. Federation of Police Officers and Vancouver Police Officers Association. (December 17, 2001). *Joint Submission to Special Committee to Review the Police Complaint Process*; and British Columbia. Legislative Assembly. Hansard (December 17, 2001). "Special Committee to Review the Police Complaint Process." pp. 123-4.

in particular, a duty by police officers, whether as respondents or as witnesses, to provide a statement and to submit to an interview when called upon to do so during an investigation into a public trust complaint.

161. With respect, firstly, to the duty to cooperate, I accept the submission of the BCAMCP that the duty to cooperate with an investigation is one owed first and foremost to the discipline authority or the officer whose responsibility it is to conduct the investigation. However, as the BCAMCP brief acknowledges, there is a duty on the part of discipline authorities (as indeed there is a duty on the part of officers conducting an investigation) to comply with "requests" from the police complaint commissioner "as to matters within his competence."[81] From the interviews we conducted, it is apparent that duty has not always been observed. If the recommendations of this report are implemented in their entirety, the matters within the "competence" of the police complaint commissioner will be substantially increased. Accordingly, the statutory duty to cooperate must include a specific duty on the part of all municipal constables, chief constables and deputy chief constables to cooperate with any requests or directions by the police complaint commissioner made pursuant to the exercise of the powers and duties of the office under Part IX of the *Act*.

162. Turning first to the duty to cooperate with an investigation, it seems to me that there is no distinction to be drawn between those officers, such as respondents and witnesses, who will be directly involved in the investigation, and their superior officers who must surely have a duty to ensure that such cooperation is forthcoming. Thus the duty must extend to all municipal constables, chief constables and deputy chief constables. In the case of an external investigation, whether initiated voluntarily by the discipline authority or ordered by the police complaint commissioner, it must include a duty on the part of all respondent and witness officers to cooperate with the external investigator. That, in turn, imposes a duty on the discipline authority of the department of which the respondent is a member to ensure that such cooperation is forthcoming.

163. In my view, the duty to cooperate with an investigation need not be confined to the investigation of public trust complaints, as investigations into service and policy complaints and internal discipline complaints are clearly contemplated in Divisions 5 and 6 of Part IX respectively. This may have some bearing on where the recommended amendment, if implemented, should be located.

164. However, as noted, in the case of investigations into public trust complaints, there is a need to particularize the scope of the duty that respondent and witness officers have to cooperate with an investigation insofar as it relates to statements and interviews. In s. 14 of his draft Police Complaint Act, the police complaint commissioner suggests a duty to make and preserve "duty reports." During the interviews we conducted, we heard a great deal about "duty reports." It became apparent, early on in the process, that the content of a duty report is something entirely within the control of the police officer who authors it. Depending on the underlying motivation of that officer, a duty report can offer little more than a chronological summary of his or her activities while on duty. What an investigator who is faced with the duty of conducting a thorough investigation needs is a statement, coupled with the ability, where necessary, to conduct an interview to ensure that a full understanding is gained of all the relevant events giving rise to a public trust complaint. Everybody, and in particular every police officer, knows what is meant by a "statement." Thus, I am of the view that Division 4 of Part IX should include a provision which stipulates that a duty to cooperate with an investigation into a public trust

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[81] Supra note 8, pp. 9-10.

complaint includes the duty of a respondent or witness officer to provide a statement and/or to submit to an interview when called upon to do so during an investigation into a public trust complaint.

165. A duty to provide a statement or submit to an interview must be complied with promptly if the quality of the investigation is to be maintained. The investigative audit revealed a number of instances where a requested duty report or statement was provided only after a lengthy delay. In some cases, usually those involving allegations of excess force, the delay exceeded six months, leading to the inference that the delay was deliberately related to the six month limitation period associated with a charge of common assault under the *Criminal Code*.[84] In a recent move, designed to improve the department's response to public complaints, the Vancouver Police Department has imposed a deadline of five days following receipt of a request for delivery of a duty report to the investigating officer. That deadline provides sufficient time for the officer facing such a request to obtain advice from either a union agent or counsel, thus ensuring that the investigation will not be unduly delayed and should prevail, subject only to the discretion of the discipline authority in special circumstances to grant an extension.

166. Turning to the duty to cooperate with the police complaint commissioner, as noted we heard during our interviews that there have been instances in the past where efforts of the police complaint commissioner or his staff to discharge the oversight duties of the office have been frustrated either by investigating officers who challenged the authority of the office to direct that further investigative steps be taken, or, less frequently, by discipline authorities who refused to investigate or reinvestigate a complaint. To be sure, some of these difficulties have arisen as a result of ambiguities in the *Act* in connection with the description of the police complaint commissioner's substantive powers or his power of delegation. However, it is the case that some have arisen because of a lingering resistance by some police officers to the concept and authority of civilian oversight.

167. If the police are to retain the privilege of investigating complaints against their own members, there must no longer be any uncertainty with respect to the powers of the police complaint commissioner, and his properly delegated staff, both to oversee the conduct of complaint investigations and to insist upon further and better investigative steps being taken in those cases where such a direction appears necessary as a result of the exercise of the oversight function. As well, the other powers of the office must be respected and accepted by those whose primary responsibility it is to see that those complaints which merit full attention are thoroughly and properly investigated and, where necessary, proceed through the disciplinary process.

168. Accordingly, I recommend that Part IX of the *Act* be amended to provide that every municipal constable, chief constable and deputy chief constable has a duty to cooperate fully with any investigation conducted under Part IX of the *Act*. As well, there must be an amendment to provide that every municipal constable, chief constable and deputy chief constable has a duty to cooperate with the police complaint commissioner, and his properly delegated staff, in the exercise of the powers and duties of that office under Part IX of the *Act*. I leave to the expertise of those drafting these amendments to decide where they should be located in Part IX.

169. Further, I recommend that Division 4 of Part IX be amended by adding a section containing an express duty on the part of respondent or witness officers to provide a statement, and to submit to an interview, when called upon to do so by an officer conducting an investigation into a public trust complaint. The amendment should further require compliance with such a request within five days of its receipt by the respondent or witness in question, subject only to the discretion of the discipline authority, in

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[84] R.S. 1985, Chapter C-46.

special circumstances, to grant an extension. To be clear, while such amendment should provide that any statement so obtained shall be admissible in any proceedings under the *Police Act*, it must also contain an express and strongly worded proviso that such statement cannot, under any circumstance excepting a prosecution for perjury, be admitted into evidence in any civil or criminal proceeding.

170. Finally, in order to ensure compliance with both the duty to cooperate and the duty to provide a statement or submit to an interview when called upon to do so, there must be some sanction available upon proof that the duty has not been met. Accordingly, I recommend that Section 5 of the *Code of Professional Conduct Regulation*[85] be amended to provide an additional category of discreditable conduct in the form of a failure to cooperate with any investigation or a failure to provide a statement or to submit to an interview when called upon to do so by an investigating officer.

171. In his White Paper the police complaint commissioner has also recommended the inclusion of an administrative search warrant provision in s. 28(2) of his draft Police Complaint Act. This proposal appears to be non-contentious. During our discussions with, in particular, discipline authorities and professional standards officers, it became evident that past experience has demonstrated the need for such an investigative tool. An amendment to provide for same was not opposed by anyone we interviewed during the course of our review.

172. Accordingly, I recommend that Part IX of the *Act* be amended by adding thereto a section which provides that a justice of the peace, who is satisfied by information on oath that there are reasonable grounds to believe that there is in a building, receptacle or place anything that there are reasonable grounds to believe will afford evidence with the respect to the commission of a disciplinary default under the *Code of Professional Conduct Regulation* may, at any time, issue a warrant authorizing a discipline authority or a municipal constable, chief constable or deputy chief constable conducting any investigation under Part IX to search the building, receptacle or place for any such thing and to seize it. Such a provision should be accompanied by the usual safeguards relating to the custody, preservation and ultimate disposal of such evidence following conclusion of the investigation in question.

F. ROLE OF POLICE COMPLAINT COMMISSIONER IN INVESTIGATION

173. Of the 294 complaint files they reviewed, the investigative audit team noted 150 in which there was what purported to be a full investigation, i.e. an investigation resulting in a finding that the complaint was either unsubstantiated (126) or substantiated (24). The balance of the complaints were withdrawn (27), summarily dismissed (86) or informally resolved (25).[86]

174. The investigative audit team noted what they considered to be investigative deficiencies in 123 of the 294 audit files they reviewed. Many of these deficiencies were of a minor nature, and did not affect the validity of the ultimate disposition of the complaint. However, after a detailed review of the investigative audit notes in each such case, I have concluded that in 48 of the 123 files in question, the investigative deficiencies were material to the outcome. This number includes complaint files in which there was what purported to be a full investigation and those in which a full investigation ought to have been, but was not, conducted.

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[85] Supra note 27.

[86] Of the total of 294 complaint files audited, 6 were "reviewed and closed." It should also be noted that the 86 summarily dismissed complaints include 85 public trust complaints and 1 service or policy complaint.

175. It is important to understand what is meant, in this context, by what I consider to be a material investigative deficiency. A material deficiency in an investigation is a deficiency that makes it impossible to conclude that the ultimate disposition of the complaint would necessarily have been the same if the deficiency had been corrected. This is by no means a conclusion that, in all or even a significant number of these 48 files, the complaints would have been substantiated. Viewed collectively, it might be that in the case of most complaints the outcome would have been the same. But the fact is that, in light of the inadequate investigations, it is impossible to reach that conclusion with respect to each of the files when considered individually. Thus, it is entirely possible that within that 48 files there may be some complaints which ought to have been, but were not, substantiated because of the unsatisfactory nature of the investigation.

176. The following is a breakdown of the materially deficient investigations.

177. There was a material investigative deficiency in 30 (24%) of the 126 files in which the public trust complaint was ultimately found to be unsubstantiated. Of the 85 public trust complaints that were summarily dismissed, the investigative audit team found that 11 (13%) should not have been so concluded, but ought to have been fully investigated. Because of either the serious nature of the complaint, or the manner in which the ultimate result was achieved, a similar finding was made by the investigative audit team with respect to five (20%) of the 25 complaints that were informally resolved and two (7%) of the 27 complaints that were withdrawn.

178. Of the 48 materially deficient investigations, 33 or 69% were with respect to complaints, among other defaults, of excess force. Of these, 23 were found to be unsubstantiated, two were withdrawn, five were summarily dismissed and three were informally resolved. Because of the serious nature of the excess force allegations, the audit team concluded that full investigations ought to have been conducted in the two complaints that were ultimately withdrawn and that the informal resolutions did not conform to the police complaint commissioner's guidelines, and were thus inappropriate, in respect of the three complaints that were concluded in that fashion. Little if any investigation was conducted with respect to the five complaints involving allegations of excess force that were summarily dismissed.

179. Of the remaining 15 files in which there were material investigative deficiencies, five involved allegations of unlawful arrest, one of which was unsubstantiated, three of which were summarily dismissed and one of which was inappropriately informally resolved. A further five involved allegations of wrongful search and seizure or retention of property that had been seized, four of which were found to be unsubstantiated and one of which was summarily dismissed. Two rudeness complaints (one summarily dismissed, one unsubstantiated), two neglect of duty complaints (one summarily dismissed, one unsubstantiated) and one deceit complaint (informally resolved) round out the balance of the files in which there were materially deficient investigations. With the exception of the two complaints of rudeness, the balance of the 48 complaint files in which the investigation was materially flawed, alleged what I consider to be serious public trust defaults.

180. In addition to the foregoing files in which there were materially deficient (and in some cases no) investigations, there were eight public trust complaint files in which an inappropriate result was recorded. In six of these files the complaint was concluded as unsubstantiated, one was summarily dismissed and in one case the internally generated complaint was withdrawn. In all eight files the investigative audit team was of the view the complaints should have been concluded as substantiated. In these files, the problem was not so much the result of a materially deficient investigation as the consequence of either a legal or factual analysis which led to a wrong result. Three of these files involved complaints that

included allegations of excess force, while two involved allegations of wrongful search and seizure or retention of property, two involved allegations of rudeness, and one was a complaint involving the use of police data banks for a purpose unrelated to a police investigation, contrary to policy.

181. In summary, there were 56 out of the 288,[87] or 19%, of the complaint files reviewed in which either the ultimate outcome could not be demonstrated to have been correct because of material investigative deficiencies (48 or 17%), or the ultimate outcome was found to be inappropriate because of a faulty legal or factual analysis (8 or 3%). Of the 56 complaints in question, 36 (64%) involved complaints of excess force.

182. Of the 283 complaint files in the audit sample, containing allegations of a public trust default, a total of 96 included allegations of excess force. Thus, 38% of the excess force allegations included in the investigative audit sample were either not properly investigated or were improperly concluded following an investigation which, by itself, was not materially deficient. When the wrongful arrests, wrongful search and seizure or detention of seized property, neglect of duty, deceit and the other abuse of authority complaints are added to those of excess force, the number of serious abuse of authority complaints that were not either properly investigated or concluded was 52 or 18% of all files reviewed in the audit sample.[88]

183. In my view, that is an unacceptable number which indicates clearly that remedial legislative amendments are required in order to enhance the civilian oversight powers of the police complaint process. These results demonstrate that, while Division 4 of Part IX provides an adequate process for the investigation, resolution and oversight of less serious complaints, there is an unacceptably high risk that the more serious public trust complaints will not either be investigated thoroughly or concluded appropriately. The question then, is what can or should be changed to address the problem effectively.

184. Some of those interviewed, in particular representatives of the BCCLA and the Pivot Legal Society, as well as some complainants and counsel who represent complainants, urged me to recommend the establishment of an independent "civilian" investigative body, which would operate either as an adjunct to the office of the police complaint commissioner or as a completely independent unit, and which would be responsible for investigating all or at least the more serious complaints against the police.[89]

185. There are currently four provinces in which the established civilian oversight body has some form of investigative role to play in the determination of complaints. In Saskatchewan, the Saskatchewan Police Complaints Commission determines who will investigate every complaint of police misconduct. It can investigate the complaint itself, order that the police investigate the complaint alone or with a Commission observer, or order that another police service investigate the complaint.[90] In Manitoba, the Police Complaints Commissioner has the responsibility to investigate all complaints and employ any person required for the prompt and thorough investigation of complaints.[91] In Quebec, an independent investigator reporting to the Police Ethics Commissioner investigates those complaints which either are not successfully resolved on conciliation or, in the opinion of the Police Ethics Commissioner, are too serious to be eligible for conciliation.[92] The New Brunswick Police Commission may appoint an

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[87] See: note 86. Of the total of 294 complaint files in the audit sample, 6 were "reviewed and closed."

[88] Excluded are the 4 rudeness complaints.

[89] I put "civilian" in quotes to emphasize that, while the proposed investigative bodies would be characterized as such, because of the need for personnel with investigative experience, some if not most of its staff would likely be ex-police officers.

[90] *Police Act*, 1990 S.S. 1990-1991 c. P-15.01, s. 45(3)(a) – (d) as amended.

[91] *Law Enforcement Review Act*, [C.C.S.M.]: Chapter L75. See: s. 12(1) and s. 12(7).

[92] *Police Act*, [R.S.Q.]: Chapter P-13.1. See: s. 178.

investigator to investigate a complaint on its own motion either directly or in circumstances where it is not satisfied with the investigation conducted by the chief of police.[93] In addition to those provinces in which the civilian oversight body already has some investigative capacity, in Ontario Bill 103 received first reading on April 19, 2006 and is presently under consideration by a committee of the Legislature. Under its provisions, the Independent Police Review Director, would be responsible for the entire complaint process and have three investigative options to chose from. He could refer complaints about police conduct (other than conduct of a chief or deputy chief of police) to the chief of the police force to which the complaint relates, to the chief of a different police force or he could retain the complaint to be investigated by his own staff investigators.[94]

186. While the results of the audit generally may provide some support for a recommendation that the office of the police complaint commissioner have an independent power to investigate public trust complaints, it must be kept in mind that adequate investigations were conducted in 96 (76%) of the 126 complaint files that were concluded as unsubstantiated and that an ultimately proper result was reached in 75 (88%) of the 85 files in which the public trust complaints were recorded as summarily dismissed even though, in a number of those instances, a full investigation was conducted and the results should more properly have been recorded as unsubstantiated. These results suggest that the Part IX process we currently have, while deficient in some important respects, has a demonstrated potential, to provide an impartial and accountable complaint process. As noted, the deficiencies revealed by the audit occurred, for the most part, in connection with the more serious public trust complaints. This suggests that what is needed is a mechanism by which the risk that the more serious public trust complaints will not be thoroughly investigated can be eliminated.

187. If an independent unit was established to handle the investigation of such complaints, there is the immediate problem of which complaints would be assigned to it. To simply develop a list of the more serious public trust defaults, as described in the particulars listed in ss. 5 through 16 of the *Code of Professional Conduct Regulation,*[95] would not suffice. For example, while excess force complaints accounted for 64% of those that were the subject of either a materially deficient investigation or an inappropriate disposition, the fact is that 62% of all excess force complaints contained in the audit sample were satisfactorily investigated and concluded. Thus, if the mandate of the independent investigative unit were to be restricted to the more serious complaints, someone would have to be given the discretion to decide, on a case by case basis, which complaints contained an inherent risk that the investigation would be flawed, if left to the police, and thus were "serious" enough to warrant assignment to that unit. For obvious reasons the only person capable of exercising that discretion on a consistent and objective basis would be the police complaint commissioner. In order for that office to perform such a role effectively, the entire structure of the present complaint process would have to be changed such that the police complaint commissioner, like the proposed Independent Police Review Director in Ontario's Bill 103, would assume responsibility for the entire complaint process. Such a change would fundamentally change the oversight role of the office, converting it into an independent complaint processing unit.

188. Another problem associated with the creation of an independent investigative unit, with responsibility for only serious complaints, is the cost associated with establishing such a unit. There are currently 18 full time professional standards officers, in six of the municipal police departments, who have handled,

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[93] Police Act, [R.S.N.B.]: Chapter P-92. See: s. 26(3) and 26(8).

[94] Legislative Assembly of Ontario. (2006). *Independent Police Review Act (Bill 103).* See: ss. 66(5)(a), (b) and (c).

[95] Supra note 27.

on average, 91% of all complaints lodged under Part IX in the past five years. In the case of two of those departments, each of which currently have only a single professional standards officer, we were told there was an intention to address the workload of that officer by adding another officer to the unit in the near future. When interviewed, the professional standards officers in three of the other four departments indicated they needed assistance in order to discharge the duties assigned to them, with the inspector in charge of the Vancouver professional standards unit, which has a present strength of 10 officers, indicating that two additional officers were needed The other five departments, accounting on average for 9% of all complaints lodged under Part IX in the past five years, as noted, do not have a full time professional standards officer assigned to investigate complaints.

189. Thus, it would appear that if all the existing professional standards units were brought up to strength, something in the order of 24 officers would be required to handle the current load of lodged complaints in the 6 departments accounting for 91% of all such complaints. Assuming that at least two full time officers would be required to properly handle the remaining lodged complaints received by the other five departments, the total strength to investigate thoroughly, and in a timely way, the number of complaints received annually, could be as high as 26. This would suggest that, if something between one-quarter and one-third of the total number of lodged complaints were assigned to an independent unit designed to investigate the more serious allegations, an investigative staff of six to eight would be needed in order for it to discharge its duties in a timely and effective way. Add in the required administrative staff, the cost of premises and the other operating and capital costs associated with such a unit and it would obviously be a very expensive solution to the problems revealed by the audit.

190. Given the very practical consideration of cost, if there is a less expensive alternative way of avoiding the risk that the more serious public trust complaints will not be properly investigated or resolved, I would not be inclined to recommend that their investigation be transferred to an independent investigative unit.

191. Another means suggested, by which the risk of inadequate investigations into serious public trust complaints might be avoided, is by creating an investigative unit consisting of officers seconded from the existing municipal police departments who would conduct what would amount to external investigations of such complaints. For the most part, while they were opposed to the idea of a completely independent investigative body, such as the Special Investigations Unit (SIU) in Ontario, the chief and deputy chief constables, discipline authorities and professional standards officers interviewed were not seriously opposed to the concept of an integrated investigative unit consisting of professional standards officers seconded from the municipal departments. Such a unit would be quartered separately, have its own chain of command, and operate independently from any individual municipal service. It would be responsible to a management committee made up of officers in senior management positions from the participating departments and would operate under the principle that no member of the unit would investigate a complaint against a respondent who was a member of the department from which he or she had been seconded unless accompanied by another member of the unit seconded from a different department.

192. Such an integrated unit would have the potential to conduct investigations that would not only be, but also appear to be, impartial and to provide greater consistency in the quality of such investigations. If properly equipped and provided with adequate administrative and technical assistance, it would also have the potential to conduct and conclude more timely investigations.

193. However, as with the independent investigative unit, there are certain practical considerations that lead me to conclude that such a unit is not a viable option at this time. The first, and most important, is once again the cost associated with putting such a unit in place. There are currently 2,263[96] out of a total of 8,118[97] municipal, provincial and special constables in this province who are subject to the Part IX complaint process. Of that number 1,174, or 52% are with the Vancouver Police Department which, in 2005, accounted for approximately 52% of all complaints lodged under Part IX. As already noted, the operational strength of five of the 11 municipal departments covered by Part IX is too small to permit a full time officer to be dedicated to the investigation of complaints, and the professional standards units of all but one of the remaining departments are considered to be understaffed.

194. If only the more serious complaints would be assigned for investigation to such an integrated unit, each department would need to retain some capacity to process the less serious complaints that could not be informally resolved. Thus, if sufficient officers were to be seconded to such a unit, in order to ensure both that Vancouver complaints were investigated by at least one officer from another department and that there was continuity in the secondment of experienced investigators, it seems inevitable that all departments would need to increase their operational strength in order to make an appropriate contribution to such a unit. Added to that would be the expense associated with establishing separate facilities with adequate equipment and administrative support staff. Then there are the geographic realities that would necessarily add significant cost to the operating budget of such a unit. These would include the relocation costs of some members of the unit if it operated out of a single headquarters in the Lower Mainland, and travel costs associated with investigations outside of that geographical area. Alternatively, the integrated seconded unit would have to operate out of two independent headquarters, one situated in the Lower Mainland and the other on Vancouver Island.

195. Given that, under the current circumstances, Part IX applies to only 28% of all municipal, provincial and special constables in the province, a fiscally responsible approach to the problem of ensuring a high quality of investigation, in the case of serious complaints, mandates consideration of a less costly, but potentially equally effective, alternative. In my view that alternative can be achieved by increasing the oversight role of the office of the police complaint commissioner with respect to the investigation into public trust complaints, without going so far as to make it responsible for actual conduct of such investigations.

196. Part IX of the *Act* currently provides for very limited substantive, as opposed to administrative, participation by the police complaint commissioner in the investigation of public trust complaints. The emphasis in the statute is on what I will refer to as *ex post facto* oversight, namely a review of a completed investigation as that investigation is summarized in the final investigation report and other records provided to the police complaint commissioner pursuant to s. 57(2) of the *Act*. The only potential exceptions to this *ex post facto* review are:

   (a) the power to request a progress report on an investigation at any time, pursuant to s. 56(5);

   (b) the power to order a new or an external investigation, pursuant to s. 56.1(3), where the police complaint commissioner concludes that the original investigation was either inadequate or unreasonably delayed; and

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[96] This number includes 2,160 municipal constables, 93 Greater Vancouver Transportation Authority Police, 2 members of the Kitasoo Xaisais Tribal Police and 8 members of the Stl'atl'imx Tribal Police (source: Police Services Division, Ministry of Public Safety and Solicitor General).

[97] In addition to those covered by Part IX, this number includes 5,029 municipal and provincial RCMP officers and 826 special constables employed in 37 provincial agencies (source: Police Services Division, Ministry of Public Safety and Solicitor General).

(c) the power to appoint an observer, pursuant to s. 56.1(1), to an investigation being conducted under:
  (i) section 55(1)(a), (a discipline authority-initiated investigation);
  (ii) section 55(1)(b), (an investigation ordered by the police complaint commissioner under s. 54(6)(a)(ii) or s. 54(8));
  (iii) section 55(3), (an investigation ordered by the police complaint commissioner on his own initiative);
  (iv) section 55.1(1)(b), (an external investigation ordered by the police complaint commissioner as necessary in the public interest); and
  (v) section 56.1(3), (a new or external investigation ordered by the police complaint commissioner where the original investigation was either inadequate or unreasonably delayed).

197. None of these powers have proved of much use in terms of insuring that a high investigative standard is maintained with respect to all public trust complaints. Section 56(1)(a) and (b) require the discipline authority to provide progress reports to the police complaint commissioner at regular intervals, the first within 45 days after the initiation of an investigation and every 30 days thereafter. In addition to noting many instances where these requirements were not observed, the audit revealed that many such progress reports amounted to little more than a cryptic statement to the effect that "the investigation is continuing." Furthermore, the investigative audit revealed more than an insignificant number of occasions where such reports misrepresented the fact that little if anything of an investigative nature had occurred since the last such report. The audit did not record any instance where the exercise by the police complaint commissioner of the power to order a progress report pursuant to s. 56(5), was used other than to effect compliance with the mandatory provisions of s. 56(1).

198. Apart from the 12 Pivot and two Hyatt files which were included in the random sample of closed files selected for the review, the audit did not reveal any instance where the police complaint commissioner had ordered either a new investigation or an external investigation for the reasons set forth in s. 56.1(3).[98] Properly construed, this power may well be viewed in any event as an *ex post facto* form of oversight insofar as it relates to the power to order a new investigation where the police complaint commissioner concludes that the "original investigation was inadequate" since, subject to the power to appoint an observer under s. 56.1(1), the police complaint commissioner has no ability to reach such a conclusion pending receipt of the final investigation report under s. 57(2). While the power to order an external investigation, where the original investigation was (or is?)[99] unreasonably delayed, may be seen as a contemporaneous form of oversight, the audit did not reveal any instance where that power was exercised, the preference apparently being for the police complaint commissioner's staff to write letters to investigators querying the reasons for the delay in concluding a particular investigation.

199. While the power to appoint an observer to an investigation, pursuant to s. 56.1(1), might be seen as an attempt to give the police complaint commissioner some formal role in an ongoing investigation, the audit revealed no instance where that power was utilized. Information obtained during the review revealed that it had been exercised only twice in the eight years since Part IX was implemented.[100] No

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[98] I am advised by the police complaint commissioner that, in addition to the Pivot and Hyatt files, a s. 56.1(3) order was made in the Berg complaint file which was not included within the random sample.

[99] Section 56.1(3) uses only the past tense, suggesting the power is, again, one that can only be exercised after the delayed investigation has been completed. However, a common sense construction would enable the police complaint commissioner to intervene before the delayed investigation is completed.

[100] One such occasion occurred in 1999, in connection with the first investigation into the Hyatt complaints, and the other in 2000, in connection with an external investigation by the New Westminster Police Service into various allegations involving the Nelson City Police Department.

doubt the reluctance to utilize this power has been influenced to a significant degree by the absence of any apparent consequence that might flow from such an appointment, other than the requirement that the observer prepare an independent report on the investigation for the police complaint commissioner. The absence of any expressed power given to the observer to participate in, or influence the conduct of, the investigation, together with the clear inference that the report prepared by the observer pursuant to s. 56.1(2) is intended to be prepared following the completion of the investigation, leads to the irresistible conclusion that this power also provides nothing more than an *ex post facto* form of investigative oversight.

200. Apart from the power to order a new investigation, external or otherwise, if the original investigation was inadequate, the only other statutory remedy for an inadequate investigation in Part IX, is the power of the police complaint commissioner to order a public hearing if he determines there are grounds to believe (s. 60(3)), or considers there are grounds to believe (s. 60(4)),[101] that such is necessary in the public interest. However, a flaw in the investigation is but one of the factors which the police complaint commissioner must weigh in deciding whether the public interest test is met and, in the absence of the police complaint commissioner ordering a new or further investigation prior to its commencement, a public hearing is neither an effective nor a timely method of curing a serious investigative flaw.

201. As noted previously,[102] the audit revealed that the average length of time between the date a complaint was lodged and the date of the final investigation report, in those files where a full investigation was conducted, was 190 days, or just slightly in excess of the statutory six month time limit provided for in s. 56(7). The median length was 156 days or just over five months, which means that in close to 50% of those public trust complaints, where full investigations were conducted, it took longer than the statutory time limit to complete the investigation. Even when those cases in which an extension was sought and granted for one of the reasons in s. 56(9) are excluded from the analysis, the audit revealed the average length of time between the date a complaint was lodged and the date of the final investigation report was 140 days or just under five months.

202. When these audit results are taken into account, the shortcomings of an *ex post facto* oversight process, such as that provided for in Part IX, are apparent. As noted, when confronted with a flawed investigation, the police complaint commissioner has only two statutory options. To order a new investigation, following an original investigation which has already taken five or more months to complete, is to condemn the resolution of that complaint to a further similar delay, a result which must be viewed as unacceptable. For the reasons already noted, the alternative of ordering a public hearing really provides no remedy at all.

203. While the lack of timeliness, in the present complaint process generally, is considered elsewhere in this report, it is appropriate to note here that the surveys and the interviews conducted revealed that both complainants and respondents were critical of the length of time it takes for complaints to be resolved. For complainants, delay leads to a perception that their complaints are not taken seriously and thus will not be investigated fairly. For respondents there is a real sense of prejudice from having unresolved complaints hanging over their heads for long periods of time while they are expected to continue carrying out their duties. From the point of view of those two most important stakeholders

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[101] The difference between a determination and a consideration in these two subsections signals a qualitative difference in the police complaint commissioner's state of mind, with the former representing a stronger belief that mandates he order a public hearing, and the latter representing a lesser belief that gives him a discretion to do so.

[102] See: paragraph 19, infra.

in the process, an oversight function that adds significantly to a process that already takes too long to unfold must be viewed as completely unsatisfactory.

204. The audit did reveal that, notwithstanding the lack of any express statutory requirement, the police complaint commissioner has adopted a policy of reviewing each final investigation report. In the course of doing so investigative deficiencies have from time to time been noted and brought to the attention of the investigator or the discipline authority in question. While this *ad hoc* process has resulted in some deficiencies being corrected, it is an imperfect answer to the problem for a number of reasons.

205. To begin with, it was reported to us that such interventions by the police complaint commissioner or his staff are occasionally met by a challenge to the authority of the office to require that additional investigative steps be taken. Additionally, the practice in most services is such that a complete investigative summary is not included in the final investigation report with the result that the police complaint commissioner must rely on a report that contains a limited summary of the investigative findings. The effectiveness of the resulting oversight is thus dependent on the completeness and accuracy of that summary, which consciously or unconsciously will have been prepared with a view to supporting the investigator's recommended conclusions. Even though investigative analysts from the office of the police complaint commissioner often attend personally to review the investigative file, not all investigative flaws can be caught in this fashion.

206. Finally, the problem of lack of timely oversight is not addressed by the present *ad hoc* process. The administrative audit revealed that the average length of time between the completion of the investigation and the conclusion of the complaint by the office of the police complaint commissioner was 105 days.[103] Thus, by the time office of the police complaint commissioner staff have been able to review a final investigative report, analyze its content and identify any further steps that should have been taken in the original investigation and perhaps even personally review the investigative file, considerable additional time will have passed before final disposition of the complaint in question is possible.

207. In light of the foregoing, I have reached the conclusion that the *ex post facto* oversight model presently found in Part IX of the *Act* is inadequate, at least insofar as it relates to the conduct of the investigation of serious public trust complaints. Oversight, if it is to be both timely and effective, needs to occur during, not after, the investigation of a public trust complaint and it must of necessity be based upon full access to that investigation as it unfolds. In my view, the role of the police complaint commissioner, as that role is presently defined by s. 56.1 of the *Act*, must be expanded to provide that, at any time following the receipt of a record of complaint, the police complaint commissioner may review the conduct of an ongoing investigation and, upon consultation with the investigating officer and/or the discipline authority, as the case may be, provide such advice and/or direction as necessary to ensure that a full and thorough investigation is conducted. Further, and in order to ensure that this amendment achieves its full purpose, the *Act* must provide that, for the purpose of giving effect to this expanded oversight role, the police complaint commissioner must, on an ongoing basis and on request, be afforded full access to the investigative file and any other documents or information in the possession of the police which may be relevant to that investigation. Finally, in order to ensure that any advice or direction provided by the police complaint commissioner is complied with, the police complaint commissioner must have a specific statutory power to order an external investigation in those instances where the advice and/or direction given with respect to an ongoing investigation is not accepted and complied with by the

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[103] When complaints in which an extension was granted were excluded from the analysis, this number dropped to 82 days.

investigator. Such a power necessarily would include the power to order that the full investigative file accumulated to that point in time be turned over to the new external investigator.

208. The purpose of these suggested powers is not to assign investigative responsibility for public trust complaints to the police complaint commissioner. In my view, that responsibility should remain with the police until such time it becomes apparent that civilian oversight in this province cannot be successful unless responsibility for investigating police complaints is transferred to a completely independent investigative unit. Taking into account the entire results of the audit, together with the practical consideration of cost and the alternative of vesting a contemporaneous oversight power in the office of the police complaint commissioner, I am not persuaded that point has yet been reached in this province. Rather, the purpose is to ensure that, where and when necessary, the police receive the advice and direction essential to the achievement of a full and thorough investigation. Obviously, in the discretion of the police complaint commissioner and his staff, some public trust complaint investigations will receive closer scrutiny than others. In the case of many complaints, they may not find it necessary to oversee the ongoing investigation closely, or perhaps even at all. In such cases, *ex post facto* oversight of the investigation can continue with a minimal risk that material flaws will have occurred in that investigation. However, in those public trust complaints involving more serious allegations, where the risk of a flawed investigation is higher, the ability of the police complaint commissioner to contemporaneously oversee the investigation should lead to results that are both more timely and free of material deficiencies.

209. These changes to the oversight role of the police complaint commissioner will not be effective, indeed could not possibly be effected, unless the mechanisms by which the current *ex post facto* oversight is accomplished are changed. Although the office of the police complaint commissioner has recently initiated a computerized Police Act Complaints Tracking System,[104] which essentially enables it to track its own functions in connection with individual complaint files, the day to day oversight process remains essentially a paper-driven process. This process includes reviewing: (i) notices of withdrawal of a complaint (s. 52.2(2)), (ii) notices of the discipline authority's decision to summarily dismiss a complaint, complete with the reasons therefore (s. 54(3)), (iii) letters of consent to the informal resolution of a complaint (s. 54.2(1)(a)), (iv) status reports with respect to ongoing investigations (ss. 56(1)(a) and (b)) and (v) final investigation reports together with "other records" that concern the complaint and the complainant (s. 57(2)), much if not most of which is transmitted to the office of the police complaint commissioner in hardcopy form. In addition, as noted, much time is spent by staff physically reviewing the actual investigative files located in the offices of the municipal police departments.

210. From the statistics published by the police complaint commissioner in his Annual Reports to the Legislature, it would appear that since 1999, the first full year of operation under Part IX, his office has on average opened 406 and closed 375 complaint files per year. Thus, with the number of files carried forward each year, it would appear that at any given point in time the police complaint commissioner and his staff currently have between 300 and 400 active files. Assuming that roughly one-third, or 100 to 133, of those files would involve allegations of a public trust default that are serious enough to warrant the exercise of the proposed contemporaneous oversight powers, it seems clear that, unless there is a change in the current paper-heavy review process, supplemented as it is in many cases by the physical examination of the concluded investigation file, current staffing in the office of the police complaint commissioner would not be adequate to meet the additional demands placed upon staff in

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[104] See: paragraph 215, infra.

terms of the time and effort required to manage the contemporaneous oversight of those estimated 100 files.

211. There are two ways in which the extra work associated with the proposed contemporaneous oversight process can be met. The first is to replace the current paper process with one that utilizes the available technology of the electronic age in which we now live and work. With the technology currently available, the oversight function of the police complaint commissioner, whether *ex post facto* or contemporaneous, can be much more efficiently and effectively performed electronically. All that is required is that the entire complaint investigation file, with the obvious exception of exhibits that cannot be reduced to electronic form, be stored electronically as that file is created. All documents, including notes of interviews and the narrative reports of the investigators can be stored in an electronic file by the investigators. All photographic exhibits and tape recorded or video taped interviews can be rendered electronically into the file. In turn, the office of the police complaint commissioner can be linked electronically to the electronic complaint files of each of the 11 municipal police departments in such a way that staff can, at any time, review the current state of an investigative file, without the necessity of travelling to the offices of the police department in question to conduct a physical review of the investigative file. There may still be the need to attend physically at the police department to review some exhibits that cannot be copied or electronically conveyed, but from the results of the investigative audit it is clear that such instances would be rare.

212. Two issues need to be addressed if the current inefficient process is to be replaced by one such as that just described. The first is cost. Progress cannot be achieved without a monetary cost. The Saanich Police Department has, on its own initiative, commissioned the creation and installation of a software program,[105] containing a Professional Standards module that enables its professional standards officers to process, record and store all the department's complaint files, both lodged and non-lodged, electronically. In addition to the Professional Standards module, this program also has other salutary features such as modules for personnel file management, quartermaster inventory control and staff development and training. In all, eight modules, any one or more of which can be obtained separately, provide a complete personnel record for each member of the Saanich Police Department.

213. The entire IPDMA software program can be obtained at a cost of $36,000 plus an additional $15,000 for installation and training. The Professional Standards module, by itself, can be obtained at a cost of $5,000 plus $2,000 for installation and training. In addition there are some costs associated with customizing and updating in the case of each installation. Thus, there is in place, at a reasonable cost, the means by which each municipal police department can create and store their complete complaint investigation files electronically.

214. The second issue is the technology that would enable the electronic investigation file to be monitored contemporaneously with the conduct of the investigation itself. The office of the police complaint commissioner recently obtained the Professional Standards module of the IPDMA which, as noted, is currently being used to track its own functions in respect of the complaint files in the two departments that currently have that same module.[106] While this represents a significant improvement in the internal efficiency of the office, without an integrated system linking the other users to a standardized data bank through one server, it necessarily involves the creation of duplicate files in the Police Act Complaints Tracking System database which contains all the information sent to it electronically. What must occur,

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[105] The Integrated Police Data Management Application or "IPDMA."

[106] In addition to the Saanich Police Department, the New Westminster Police Service recently acquired the Professional Standards Module. The Greater Vancouver Transportation Authority Police Service has acquired it as well, but does not currently have the capacity to use it.

if the full benefit of this technology is to be utilized, is that all police departments covered by Part IX acquire the professional standards module of the IPDMA, following which all would be linked to the office of the police complaint commissioner through an integrated system that would enable that office to access the complaint files, both lodged and non-lodged, of each department on an ongoing basis.

215. Through discussions with the president of Systemtek Consulting, the company which developed the IPDMA, I am advised that such a system could be designed and up and running within three to six months, with full security, at a cost not much in excess of $100,000. While there are alternative system designs, the preferred one would consist of one shared back end database belonging to the office of the police complaint commissioner and one shared front end user interface with remote access available to all departments and the office of the police complaint commissioner. Adequate server storage capacity exists in the system presently in use at the office of the police complaint commissioner and the only part of the system that would need to be designed is the security software. That would control access to the system in such a way that each department could only access its own files, while the police complaint commissioner and his staff would have access to all at will. Finally, I am advised that one day of training for each department would suffice for professional standards officers required to utilize the IPDMA and that experience with those departments that have adopted it already indicate new trainees would become fully competent in its use in less than 30 days.

216. The Executive Director of the Information Technology Services Division, Management Services Branch, of the Ministry of the Attorney General, confirms that linking all municipal police departments together in a secure integrated system is possible. However, from recent experience associated with getting PRIME[107] up and running throughout the police services in this province, he cautioned that implementing such a change could prove to be a slow process. If the electronic contemporaneous oversight process I am suggesting is to become a reality, there is a demonstrated need to implement the proposed changes quickly. That, of course, can be achieved by a statutorily mandated timetable for the creation and installation of the necessary computer programs and the training of the personnel responsible for operating them.

217. The second way in which the extra workload associated with the contemporaneous oversight function must be borne is by the police complaint commissioner hiring additional staff. There are currently four investigative analysts, including the deputy police complaint commissioner working out of two office locations in downtown Vancouver and Victoria. Given the increased efficiency of the proposed electronic form of complaint file monitoring, together with the increased number of informal resolutions, if the recommendation with respect to ordered mediation is implemented, it is difficult to estimate how many more, if any, fulltime equivalents would be required to ensure effective oversight given the gradual increase in the complaint case load across the 11 municipal police departments. However, bearing in mind that contemporaneous oversight would not be necessary in the case of every active complaint file, and that a careful discretion would necessarily be exercised in choosing those files in which it would be employed, it seems unlikely that more than two additional investigative analysts would be required.[108] If that were the case, additional office space would be required in Vancouver and there will necessarily be additional overhead and capital costs associated with such an increase in staff. From inquiries made of the Director of Corporate Services, for the Office of the Ombudsman, I am given

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[107] "Police Records Information Management Environment" or PRIME, is the operational records management system for police agencies in British Columbia.

[108] Obviously the police complaint commissioner is in the best position to advise the Legislature what, if any, additional staffing requirements flow from the implementation of the recommended contemporaneous oversight model.

to understand that the total salaries and benefits of two additional investigative analysts, together with the associated overhead costs, would not likely exceed $350,000 to which must be added additional capital costs of approximately $15,000.

218. While these costs, together with those associated with the integrated IPDMA system, represent an increase of approximately 35% over the 2005 budget of the office of the police complaint commissioner,[109] they are much less than would be required if either of the two alternative forms of independent investigative units, discussed above, were to be implemented. As noted, creating an independent investigative unit, operating either independently or as an adjunct of the office of the police complaint commissioner, would involve six to eight fulltime investigators if only a quarter to a third of the current annual complaints were to be assigned to that unit for investigation. Alternatively, the creation of a seconded integrated professional standards unit would likely involve at least 10 of the 11 municipal police forces having to increase their operational strength by at least one fulltime position, as well as the cost of establishing separate quarters and employing administrative support staff.

219. One category of complaint that did not appear in our random sample of 294 closed files, and was therefore not included in the audit process, is that which arises when a person dies either while in-custody or as a result of police-related actions. Such events often attract widespread media attention which, in turn, has a tendency to affect the public's perception of the integrity of any resulting criminal investigation and complaint process.

220. It is difficult to get accurate figures with respect to the number of deaths that occur in such circumstances. Surprisingly, Police Services Division does not keep official statistics of such events. In fact, I am told that it is not systematically formally advised of a police-related death. The most recent available figures on in-custody and police-related deaths in BC are from the BC Coroners Service for up to and including 2004. In the three years, 2002 to 2004, there were a total of 26 in-custody or police-related deaths which occurred in seven of the 11 municipalities whose police departments fall under the jurisdiction of Part IX of the *Act*.[110] Because the statistics for each category are not segregated,[111] it is impossible to know how many of those were in-custody deaths, at least some of which would likely have been the result of causes unrelated to any police act or omission, and how many were the result of some form of police action.

221. The office of the police complaint commissioner received only seven complaints in connection with the 26 in-custody or police-related deaths that occurred in that three year period.[112] Of these, four involved police shootings, two involved the use of a TASER and one resulted from a death that occurred following an arrest involving the use of force. With the exception of one of the TASER-related death complaints, which has not yet been concluded, all of the complaints were found to be unsubstantiated.[113]

222. Police-related deaths are often the cornerstone of the argument advanced by those who advocate the creation of an independent investigative unit dedicated to the investigation of police complaints.

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[109] The 2005 combined operational and capital budgets of the office of the police complaint commissioner was $1,315,000 (source: BC Police Complaint Commissioner, 2005 *Annual Report*, p.25).

[110] Source: BC Coroners Service.

[111] The B.C. Coroners Service statistics break down the total deaths into 8 categories, 4 of which are in-custody related, but do so only on a province wide basis, not by municipality. Similarly, there are 5 death classifications: accident, homicide, natural, suicide and undetermined, but these classifications are also recorded only on a province wide basis without municipal breakdown.

[112] Two additional files were opened without a Form 1 complaint, 1 of which, a police shooting, was closed after a review of the circumstances involved. The other, classified as a "death following arrest," is still being "monitored."

[113] Correspondence dated September 18, 2006, from Dirk Ryneveld, Q.C. to Josiah Wood.

Since such deaths often occur in the course of rapidly evolving circumstances, in which there are few if any independent witnesses, many questions arise concerning both the facts giving rise to the use of deadly force and the manner in which that force was used. Such circumstances are the natural breeding ground for suspicion and distrust, and when the answers to those questions appear to come only from those whose conduct is under investigation, reasonable and right thinking people are occasionally left to wonder whether those whom we entrust with the right to use deadly force are, in fact, properly accountable in all cases of its use. Thus, there is a need to ensure that complaints arising from such incidents are investigated and resolved, as much as possible, in a manner that not only enhances, but is perceived to enhance, accountability.

223. I have already concluded that, from a practical point of view, the results of our review do not justify the establishment of either an independent investigative unit, or an integrated seconded investigative unit, with a mandate to investigate the more serious public trust complaints. The number of in-custody and police-related deaths that occur annually in the Part IX jurisdictions, and in particular the low incidence of complaints that result from such deaths, does not persuade me that this category of complaint gives rise to a compelling argument for the establishment of either of those specialized investigative units, particularly if there exists an alternative means by which the requisite degree of accountability can be achieved in such cases.

224. One suggestion, made during the course of our interviews, was that all police-related deaths should be the subject of a statutorily mandated external investigation, irrespective of whether a complaint is lodged in respect of such deaths. As noted, less than one-third of the in-custody and police-related deaths, in the three years for which related statistics are available, resulted in a lodged public trust complaint. External investigations were requested by discipline authorities in connection with the complaints arising from three of the four police shootings resulting in death during the three year period described above. In one of the TASER-related deaths, the police complaint commissioner ordered an external investigation. The other three complaints were investigated and resolved by the police department of which the respondent police officer is a member. While the sample would be too small to enable a comparative assessment of the outcome in each of these seven cases, common sense suggests that a mandatory external investigation in all in-custody and police-related deaths provides at least some degree of public confidence that real accountability exists in such cases.

225. Section 55.1(1)(a) of the *Act* places a mandatory duty on a discipline authority to refer an investigation into a complaint to either another municipal police department or the RCMP, if such a referral is necessary in order to preserve public confidence in the complaint process. Section 55.1(1)(b) presently gives the police complaint commissioner the power to order an external investigation into a public trust complaint where he considers it necessary in the public interest. It is, of course, in the public interest to preserve public confidence in the police themselves as well as in the complaint process. In my view, as suggested above, common sense compels one to the conclusion that public confidence in the police will be preserved, if not enhanced, by requiring that all in-custody and police-related deaths must be investigated by an external agency. That will particularly be so, if the police complaint commissioner is vested with the power both to oversee such investigations as they unfold and to ensure that all necessary steps are taken to ensure a thorough and complete investigation.

226. In this respect there are two further matters that must be addressed. The first is that while the police complaint commissioner has the authority, under s. 55(3), to order an investigation irrespective of whether a record of complaint has been lodged, his power to order an external investigation under s. 55.1(1)(b) is limited by the language of the section to "public trust complaints." In other words, there

must be a lodged complaint before the power to order an external investigation can be exercised. The s. 55(3) power to order an investigation, irrespective of whether a record of complaint has been filed, does not explicitly reference an external investigation. As noted, in the three year period for which concurrent data is available, from both the B.C. Coroners Service and the office of the police complaint commissioner, there were two instances where the police complaint commissioner found it necessary to "monitor" the police investigation into a police-related death where no complaint had been lodged. One of those deaths in fact resulted from a police shooting. The s. 55(3) discretionary power to order a "complaint" investigation, in circumstances where no complaint has been lodged, is one important means by which the police complaint commissioner can ensure that the oversight process he administers achieves its intended purpose. To that end, there must be no uncertainty with respect to his power to order an external investigation notwithstanding that no public trust complaint has been lodged. Furthermore, in order to ensure that the power to order an investigation where no complaint has been lodged can be exercised effectively in the case of an in-custody or police-related death, it seems to me axiomatic that notice of all such deaths must be given to the police complaint commissioner

227. The second matter with respect to the power to order external investigations, that was brought to our attention during the interviews, is that when ss. 55.1 and 56.1 are read in conjunction with the definition of "municipal police department" in s. 1 of the *Act*, it seems apparent that the police complaint commissioner's choice of an external agency, when exercising the power to order an external investigation, is confined either to one of the other 10 municipal police departments which are covered by Part IX of the *Act*, or to the RCMP as the provincial police force. We were advised by the police complaint commissioner that this restriction has created difficulties in the past. While it would obviously make sense, in any given case, to assign an external investigation as a matter of first choice to another municipal police department or the provincial police force, there does not seem to be any logical reason why such restriction should be placed on either a discipline authority or the police complaint commissioner who has decided it is in the public interest that an investigation into a public trust complaint should be referred to another police agency.

228. Finally, if an external investigation, which is either requested by the discipline authority or ordered by the police complaint commissioner, is assigned to a police service other than a municipal police department, the contemporaneous oversight power of the police complaint commissioner could not be exercised through the proposed integrated IPDMA system. However, in such a case, the police complaint commissioner can appoint an observer under s. 56.1 of the current *Act*. For this to be a meaningful appointment, s. 56.1 must be amended to provide that the observer has the ability, upon consultation with the investigator or the discipline authority, to advise and, if necessary, to direct that certain investigative steps be taken.

229. Accordingly, I recommend that s. 56.1 of the *Act* be amended to provide that the police complaint commissioner's oversight powers include both the power to monitor the investigation into a public trust complaint, as that investigation is being conducted, and the power, upon consultation with the investigating officer or the discipline authority, to provide advice and direction with respect to further investigative steps that he believes are necessary to ensure that a thorough and complete investigation is conducted. In order to ensure that this power is effective, s. 56.1 should further be amended to provide the police complaint commissioner with the power to order an external investigation in any case where, after and notwithstanding consultation with the investigating officer and the discipline authority, he believes that a thorough and complete investigation will not be conducted. Concurrent with this power must be the power to order that the full investigative file accumulated to the point

where the order for an external investigation is made be delivered forthwith to the external agency which is to assume conduct of the investigation.

230. In addition to the contemporaneous oversight power with respect to lodged complaints, the amendment must include the power of the police complaint commissioner to contemporaneously monitor the non-lodged oral complaint records of each municipal department. In this way the police complaint commissioner can make a timely decision whether to require an investigation in respect of a complaint which is serious enough to warrant such investigation, but where the complainant refuses to commit his or her complaint to writing.

231. In order to facilitate the ability of the police complaint commissioner to exercise the expanded oversight mandate resulting from the power to contemporaneously monitor both non-lodged complaints and on-going public trust investigations, I recommend that Part IX of the *Act* be amended to require all municipal police departments to acquire either the IPDMA Professional Standards Module, or its equivalent, and to link that module to a fully secure integrated system that gives the police complaint commissioner electronic access to the complete complaint files of each such department. To be effective, this amendment must include a requirement that all municipal police departments utilize the IPDMA Professional Standards Module, or its equivalent, to store the entire contents of all lodged and non-lodged complaint files. In order that this innovation not be unnecessarily delayed, I recommend that the statutory amendment giving effect to it include a specific deadline for implementation, such deadline to be set after consultation with the departments and the technological personnel charged with the responsibility of designing and installing the system and training the professional standards officers who must use it.

232. I further recommend that Division 4 be amended to provide that the police complaint commissioner must be given notice of any in-custody or police-related death and that an external investigation, under Part IX of the Act, be conducted in all in-custody and police-related deaths irrespective of whether a complaint has been lodged in connection with that death. I further recommend that all such investigations shall be subject to the same contemporaneous oversight powers given to the police complaint commissioner in the case of investigations into public trust complaints. To facilitate the ability of both discipline authorities and the police complaint commissioner to ensure that any required external investigation can be undertaken and concluded, I also recommend that those provisions of Division 4 which provide for such investigation be amended to ensure that the scope of available external agencies is not limited to existing municipal police departments or the provincial police force, as both are currently defined in the *Act*.

233. Consistent with the proposed power of contemporaneous oversight, I recommend that s. 56.1 of the *Act* be amended to provide that an appointed observer will have the power, upon consultation with the investigator or the discipline authority as the case may be, to advise and, if necessary, through the police complaint commissioner to direct that certain investigative steps be taken.

G. REASSIGNMENT OR SUSPENSION PENDING INVESTIGATION OR HEARING

234. Having reviewed the joint submission to the Special Committee of the Legislature by the Vancouver Police Union, the B.C. Federation of Police Officers and the Vancouver Police Officers Association,[114]

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[114] Supra note 82, pp.41-43.

as well as the testimony of Professor Stenning at the same hearings,[115] and notes of interviews we conducted during the review with various union representatives and, indeed, some discipline authorities, I am satisfied that the provisions of s. 56.2 must be amended to provide for a fair process by which a suspended respondent's right to pay and allowances during the period of his or her suspension can be determined.

235. To begin with, a respondent officer does not have any right, under Part IX, either to a hearing before, or a review after, a suspension order is made. That lack of process is, to some extent, offset by the stringent tests in s. 56.2(1)(a) and (b) that must be met before a suspension can be ordered. As well, the overriding responsibility of the discipline authority to maintain public confidence in the integrity of the police service justifies the unilateral nature of the power of suspension. However, there seems to be little, if any, justification for denying a suspended respondent the right to at least be heard before the employer discontinues his or her pay and allowances. Under s. 56.2(6), the only rights such a respondent presently has is to a hearing after such an order has been made by a police board under s. 56.2(5), there being no right even to a hearing if the discontinuance of pay and allowances is automatic, after 30 business days, under s. 56.2(4)(a).

236. As pointed out by Professor Stenning,[116] there is no apparent rationale for the 30 day limit on a suspended respondent's right to receive pay and allowances, particularly given that, as our administrative review demonstrates, any investigation is likely to take very much longer than that to complete.

237. In s. 30(4) of his draft Police Complaint Act, the police complaint commissioner would provide a suspended respondent the right to receive pay and allowances, subject to the local police board at any time discontinuing same if the allegation in response to which the suspension was ordered would, if proved, constitute a criminal offence, or if the board otherwise concludes there are strong reasons in the public interest to do so. This proposed amendment would preserve the s. 56.2(6) right of a suspended respondent to request a hearing after such an order had been made by the board.

238. I am of the view that a respondent who is suspended pursuant to s. 56.2 should be presumptively entitled to receive full pay and allowances during the period of such suspension unless the local police board, after proper notice to the respondent, and after a hearing at which the respondent is entitled to appear, to be represented by counsel or an agent and to be heard, decides there are strong reasons in the public interest why his or her full pay and allowances should be discontinued. Accordingly, I recommend that s. 56.2(4) through (8) be amended to reflect those basic principles of fairness.

H. DISCLOSURE OF DOCUMENTS AND NOTICES TO RESPONDENT AND COMPLAINANT

239. There are certain problems with ss. 57 and 57.1 of the *Act*. To begin with, when read together, they do not adequately separate the roles of the investigating officer and the discipline authority. For example, given the requirement in s. 57(2), for the discipline authority "promptly after receipt" of the final investigation report, to provide same to the police complaint commissioner along with, *inter alia*, all reasons for imposing or not imposing corrective and/or disciplinary measures in relation to the complaint, it is clear that any such reasons given must be those of the investigating officer, and not the discipline authority who can hardly have had time to consider the matter. While s. 57.1(1) requires

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[115] British Columbia, Legislative Assembly, Hansard. (November 19, 2001). "Special Committee to Review the Police Complaint Process." p. 56.

[116] Ibid.

the discipline authority "to determine" whether corrective and/or disciplinary measures are warranted, that section does not require that the notice reflecting that decision be sent to the police complaint commissioner, the obvious inference being that it is not expected those determinations will be any different than the "recommendations" in the final investigation report.

240. From the review we conducted, it is apparent that this confusión of roles has resulted, in many instances, in the investigating officer essentially performing both functions, with the discipline authority simply accepting and rubber-stamping the former's conclusions and recommendations. In some services, this practice has developed to the point where the investigating officer drafts a reporting letter for the discipline authority to sign, which includes a summary of the investigation and the conclusions which the investigator has reached.

241. In my view, the proper role of the investigating officer is to conduct a thorough investigation, to apply all relevant policies and the provisions of the *Code of Professional Conduct Regulation*[117] to the results of that investigation, and to produce a final investigation report containing a complete summary of the investigation, a recommendation with respect to whether the complaint should be found to be substantiated and, in the event it is, a recommendation as to the appropriate range of corrective or disciplinary measures based on previous complaint experience. The obligation of the discipline authority is to review the final investigation report, and to decide whether to accept the recommendations of the investigating officer. That function involves the discipline authority exercising his or her independent judgment and deciding firstly whether, on the basis of the evidence in the final investigation report, the alleged public trust default has been established on a balance of probabilities. If it has, the complaint has been substantiated. If, and only if, the complaint has been substantiated, the discipline authority must then go on to decide what corrective or disciplinary measures should be imposed in all the circumstances.

242. Section 57.1(1) fuses these two separate and distinct functions of the discipline authority. Nowhere in this subsection is there any reference to the words "substantiated" and "unsubstantiated." The distinction between the determination whether a complaint is substantiated and, if so, the determination of what consequences should flow from that conclusion is important. From the point of view of the respondent, it is essential that distinction be recognized. No corrective or disciplinary measures can be imposed, in connection with an alleged public trust default, unless that default has been established on the proper standard of proof. By contrast, it would be an exceptional case, requiring the closest of scrutiny, where a public trust default was established and no corrective or disciplinary measure was imposed.[118] From the point of view of the complainant, the required notice under s. 57.1(1)(b) leaves open the question whether the conduct complained of was found to have occurred and simply advises that corrective or disciplinary measures have been found not to be warranted, thus inviting the conclusion that the complaint was not taken seriously.

243. Turning to another problem, it is difficult to understand why the disclosure of "documents" provided for in s. 57, and the notice requirements of s. 57.1, needs to be separated into two distinct functions. There is an unnecessary complexity in the way in which these steps are set out in the *Act*. They can and should be combined into a relatively simple and straightforward process whereby the investigating officer provides the final investigation report to the discipline authority who reviews it, reaches an

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[117] Supra note 27.

[118] The administrative audit revealed that in the case of 15 of the 24 substantiated complaints in the audit sample, no corrective or disciplinary measure provided for in the *Code of Professional Conduct Regulation* was imposed. In many of these cases, "managerial advice" or "advice as to future conduct" was the measure imposed.

independent judgment with respect to the proper conclusion(s) to be drawn from it and notifies all concerned accordingly. One of the anomalies of the present process, as described in these two sections, is that while the police complaint commissioner is supposed to receive a complete, unedited version of the final investigation report, together with any other "records" under s. 57(2), as already noted there is no requirement that he be provided with a copy of the notice which the discipline authority is obligated to provide to the respondent and complainant under either s. 57.1(1)(a) or (b). Thus, apart from any "recommendation" of the investigating officer contained in the final investigation report, the first notice which the police complaint commissioner would have of a decision by the discipline authority under s. 57.1(1)(b) would be a request from the complainant for a public hearing under s. 57.1(3) if, in fact, such a request was made. As I have suggested, this oversight in the legislation tends to reinforce the perception that it is really the investigating officer who decides whether a complaint is substantiated since, in the absence of a complainant's request for a public hearing, the content of the final investigation report would be the only basis upon which the police complaint commissioner could decide on his own motion to order a public hearing.

244. Other problems exist with each of these sections. Dealing first with s. 57, it is noteworthy that during the course of the interviews we conducted, we heard no reasonable explanation why both the respondent and the complainant should be entitled only to a summary of the final investigation report, rather than the complete document subject, of course, to proper editing with respect to any sensitive law enforcement information or any portion of the report exempted from disclosure under the *Freedom of Information and Protection of Privacy Act.*[119] The need to provide a summary of the final investigation report, which itself is but a summary of the entire investigation, in effect requires the investigating officer to prepare two separate reports at the conclusion of the investigation. This obvious waste of time and resources has led to the practice in some municipal departments of producing only one summary of the investigation which is then provided to both the respondent and complainant in the form of a letter, signed by the discipline authority, which also advises of the discipline authority's decision under s. 57.1(1) of the *Act*. The police complaint commissioner receives a copy of this letter in place of the final investigation report, which s. 56(6) requires the investigating officer to prepare, and s. 57(2) requires the discipline authority to provide to the police complaint commissioner "promptly after receipt." Thus, as a result of what amounts to a sensible effort by the police departments in question to avoid the unnecessary duplication of work mandated by s. 57(1) the police complaint commissioner does not receive the disclosure anticipated by s. 57(2), a fact which necessarily must interfere with his ability to perform the oversight function of that office.

245. The statutory requirement that the respondent and complainant be provided with only a summary of the final investigation report also sets in motion a process failure, in that a respondent who may be required to decide whether to accept a corrective or disciplinary measure offered at a prehearing conference, or whether to proceed to a discipline proceeding, is left to make that decision on the basis of what, as previously noted, is essentially a summary of a summary of the full investigation.

246. During the course of the review, we noted that the quality and completeness of final investigation reports varied considerably from department to department. In some cases, virtually the full investigative file was included. In others, as noted, a bare summary of that file was provided in the form of a letter which served as well to give the respondent and complainant notice of the discipline authority's decision under s. 57.1(1). In my view, the former sets the standard that should be met by all municipal police departments. If the recommended integrated IPDMA system is put in place, the creation of a high

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[119] R.S.B.C. 1996, c. 165 and amendments thereto.

quality and complete final investigation report will be a simple matter, as will the process by which the copies of that report can be edited as necessary before being served on the respondent and the complainant.

247. As already discussed, the same integrated IPDMA system, if implemented, will also ensure that the police complaint commissioner has full access to the investigative file, including the final investigation report. Thus, s. 57(3) would no longer be relevant. However, there may be instances in which all the information required by the police complaint commissioner in the exercise of his oversight function is not contained in the investigative file. One example might be when a complaint investigation is stayed pending the outcome of a criminal investigation into the circumstances giving rise to the complaint. In that event, there may be information in the criminal investigation file which does not find its way into the complaint file. The duty of disclosure found in s. 57(2) must clearly provide that the police complaint commissioner is entitled to any information relevant to the circumstances giving rise to the public trust complaint, irrespective of where it might be located in the records of the municipal police department to which that complaint relates.

248. Turning to s. 57.1, I have already noted that for some reason it does not require that the police complaint commissioner be given notice of the discipline authority's decision(s) under s. 57.1(1)(a) or (b). As a result, in the absence of a s. 57.1(3) request for a public hearing from the complainant, the only basis upon which the police complaint commissioner could exercise his discretion to order a public hearing under s. 60(4) of the *Act*, would be the content of the final investigation report notwithstanding that, in the circumstances, it is the discipline authority's decision, and not the recommendations of the investigating officer, that must be the object of the public hearing remedy. Thus, in my view, the notices required by s. 57.1(1)(a) and (b) must also be provided to the police complaint commissioner along with the final investigation report.

249. Currently, under s. 57.1(3), a complainant, who is aggrieved by a discipline authority's decision under s. 57.1(1)(b), may file a written request for a public hearing with the police complaint commissioner who, under s. 60(3)(b), must arrange such a hearing if he determines there are grounds to believe that a public hearing is necessary in the public interest. As well, without any such request from the complainant, under s. 60(4) the police complaint commissioner may order a public hearing on his own motion, if he considers that a public hearing is necessary in the public interest. In my view, neither alternative provides an effective safeguard against the potential that the discipline authority may reach the wrong conclusion and find a public trust complaint unsubstantiated when there is a reasonable basis in the final investigation report for concluding that it should have been concluded as substantiated.

250. To begin with, the public interest test is too high a threshold to permit rectification of error by that means in any but the most egregious of public trust defaults. Furthermore, as experience has shown, public hearings of the sort presently provided for in the *Act*, are a costly, lengthy and generally unsatisfactory means of ensuring the integrity of the complaint process. In my view, some means short of a public hearing should be available to address the situation where, in the opinion of the police complaint commissioner, the discipline authority's conclusion under s. 57.1(1)(b) is wrong. As noted, the investigative audit team concluded that such errors had occurred in eight of the complaint files in the audit sample. If the police complaint commissioner had the statutory authority to intervene and to require a review of that decision, without having to order a public hearing, those errors could potentially, have been avoided. Similarly, in those cases where the investigative audit team observed that inadequate disciplinary measures were imposed, in the discipline files they reviewed, such a review process could have produced a quick and effective correction.

251. In my view, the police complaint commissioner should have such authority. Under the current statutory framework the role of the police complaint commissioner is to oversee, and not to perform, the disciplinary function in the complaint process. Thus, I do not accept the proposal of the BCCLA that the police complaint commissioner should have the power to substitute his own decision for that of the discipline authority.[120] Instead, I recommend that s. 57.1 be amended to provide that if the police complaint commissioner believes, on reasonable grounds, that the decision of a discipline authority under s. 57.1(1)(b) is wrong, he may order that a discipline proceeding be convened before a chief or deputy chief constable of a different municipal department. In such a case, an alternate discipline authority or a senior officer of that department would be responsible for presenting the evidence at such a proceeding, and the discipline proceeding would be conducted in accordance with the recommendations I am making for amendments to s. 59.

252. If this recommendation is implemented, s. 57.1(3) should be deleted as the right of a complainant to request a public hearing, following the conclusion of such a discipline proceeding, is preserved in s. 59.1(3).

253. In summary, I recommend that ss. 57 and 57.1 be amended by combining them into a single section which provides that:

(a) Upon receipt of the final investigation report, the discipline authority must decide, on the basis of the evidence contained in that report, whether the discipline default alleged in the public trust complaint has been established on a balance of probabilities. If the discipline authority decides that the public trust complaint is substantiated, he or she must then decide the appropriate corrective or disciplinary measure to be imposed upon the respondent.

(b) Within 10 business days of the receipt of the final investigation report, the discipline authority must provide the respondent, the complainant and the police complaint commissioner with a copy of the final investigation report together with notice of his or her decision whether the public trust complaint is substantiated and, if so, what proposed corrective and/or disciplinary measures are warranted in the circumstances. The notice accompanying the final investigation report should also contain the matters listed in s. 57.1(2) of the *Act*.

(c) The final investigation report must be served on both the respondent and the complainant, subject to editing to remove any sensitive law enforcement information or any information which is subject to exemption under the *Freedom of Information and Protection of Privacy Act*.[121] The final investigation report provided to the police complaint commissioner shall not be edited and, in addition to the final investigation report, the discipline authority shall provide to the police complaint commissioner any and all information in the possession of the municipal police department and not included in the investigation file related to the complaint, that may possibly be relevant to the circumstances giving rise to the complaint, including, without limitation, those matters currently listed in s. 57(2)(a) through (f) inclusive.

(d) If the final investigation report provided to the respondent and complainant is edited, either or both may apply to the police complaint commissioner to be given access to the edited portions, and the police complaint commissioner may disclose such portions on the grounds presently set out in s. 57(5).

(e) S. 57.1(3) be deleted.

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[120] Supra note 43, pp. 5-6.

[121] Supra note 119.

(f) If the police complaint commissioner considers there are grounds to believe that the decision of a discipline authority under s. 57.1(1)(b) is wrong, he may order that a discipline proceeding be convened in respect of the complaint before the chief or deputy chief constable of another municipal department.

(g) Any decision by the police complaint commissioner, on his own motion, to require that a discipline proceeding be convened in connection with a complaint, which a discipline authority has found to be unsubstantiated under s. 57.1(1)(b), must be made within 30 days of the police complaint commissioner's receipt of the final investigation report and notice of the discipline authority. Finally, if no such discipline proceeding is ordered and the police complaint commissioner does not arrange a public hearing, the decision of the discipline authority to dismiss the complaint as unsubstantiated is final and conclusive.

254. As a necessary consequential amendment, I recommend that s. 56(6) be amended to provide that the final investigation report contemplated by that section contain a complete summary of all relevant evidence in the investigative file, together with copies of any relevant documents or records and the investigator's findings, conclusions and recommendations.

255. One further matter needs to be addressed under this heading. In recommending that the complete final investigation report be given to both the complainant and the respondent, I added the *caveat* that it be subjected to editing, *inter alia*, with respect to sensitive law enforcement information. The Special Committee of the Legislature received a thoughtful submission from representatives of what was then the Organized Crime Agency of British Columbia, which stressed the need to protect the confidentiality of information that, if disclosed, would adversely affect the integrity of ongoing police operations.[122] As a consequence, in its Second Report, the Committee recommended that protocols be developed, in consultation with relevant agencies for the "protection of such information."[123] This recommendation set out considerable detail with respect to the substance of the proposed protocols.

256. The police complaint commissioner, in s. 18 of his draft Police Complaint Act, proposes that a power be vested in his office, upon the *ex parte* application of any police officer or police agency, to order that sensitive police information not be disclosed to the complainant or any other person, or that it only be disclosed upon such terms and conditions as he directs. I am satisfied that such a provision is necessary and I recommend an amendment accordingly. I leave it to the legislative drafters to determine where such an amendment should most conveniently be located in Part IX.

I. PREHEARING CONFERENCES

257. The only substantive issue that arose during our review with respect to the prehearing conference, was whether it should be abolished. The submission of the BCAMCP, in response to the police complaint commissioner's White Paper, recommended it should be abolished, suggesting that its purpose would just as well be served by informal discussions between the respondent and the discipline authority.[124] The problem with informal discussions is that they are not subject to oversight. The report which the police complaint commissioner is presently entitled to receive under s. 58(5)(a) of the *Act*, together with the final investigation report, provides him with an informed basis upon which to determine whether the proposed final disposition of a substantiated complaint is appropriate.

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[122] Organized Crime Agency of British Columbia. (January 21, 2002) *Report to the Special Committee of the Legislature.*

[123] Supra note 4, p. 21. See also Special Committee recommendation 38.

[124] Supra note 8, pp. 13-4.

258. The interviews we conducted with both professional standards officers and discipline authorities confirmed that corrective and/or disciplinary measures recommended by the former are frequently "bargained down" during the prehearing conference. Whether that is a good or a bad thing is not really the issue. What is important is whether the ultimate disposition of the complaint, including the corrective and/or disciplinary measures proposed, is appropriate. I am satisfied that, if the changes I am recommending are implemented, the oversight powers of the police complaint commissioner will be sufficient to ensure that no proposed dispositions are improperly reduced at a prehearing conference.

259. In my view, the prehearing conference is a straightforward and expeditious process by which public trust complaints can be properly resolved. Accordingly, I would not recommend that it be eliminated from the disciplinary process in Division 4.

J. CONVENING A DISCIPLINE PROCEEDING

260. During the interviews we conducted we heard repeated concerns regarding the extent to which the discipline proceeding, as currently structured in Division 4, is not viewed as an impartial hearing process. On behalf of respondents it was argued that a discipline authority who has already decided that a public trust complaint against a respondent has been substantiated, and settled upon what he or she believes is an appropriate corrective or disciplinary measure which has been offered and rejected at a prehearing conference, is unlikely to approach that respondent's defence at a discipline proceeding with an open mind. On the other hand, the police complaint commissioner, while acknowledging that respondents have a legitimate concern in that regard, also expressed a concern that, in some circumstances, a perception of partiality on the part of discipline authorities in favour of respondents may arise.

261. In his draft Police Complaint Act, the police complaint commissioner proposes a solution to both concerns. In response to that raised on behalf of respondents, he proposes that where a discipline authority has participated in a prehearing conference, a subsequent discipline proceeding must be conducted by a chief or deputy chief constable of a different municipal department.[125] In response to his concern that, in some circumstances, a discipline authority may be perceived to "have tainted the necessary perception of fairness and impartiality," he proposes a power in his office to order, at any time, that the functions of the discipline authority be exercised by another (i.e. an external) chief or deputy chief constable.[126] This power, as drafted, would enable the police complaint commissioner to order the appointment of an external discipline authority at the earliest stages of the complaint process.

262. Turning first to those concerns expressed by and on behalf of respondents, it is a fact that s. 11(d) of the *Charter of Rights and Freedoms*[127] cannot be invoked to guarantee an independent and impartial tribunal to a respondent in a disciplinary process such as that provided for in Part IX of the *Act*.[128] However, the real question is whether there is any persuasive argument in favour of denying respondents at least some measure of confidence that discipline proceedings will not be presided over by someone who has already decided the case against them. The answer to that question lies in the balance that must be struck between providing respondents with a reasonable expectation of an impartial discipline

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[125] Supra note 10. See: s. 34(2).

[126] Ibid. See: s. 9(13).

[127] *Constitution Act*, 1982, [R.S.C. 1985]: Appendix II, No. 44.

[128] See: *R. v. Wigglesworth*, [1987] 2 S.C.R. 541.

process on the one hand and creating a process that does not interfere unduly with a chief constable's responsibility to ensure a high standard of discipline on the other.

263. In my view, that balance can be struck by an amendment to s. 58.1 of the *Act* which provides that a discipline authority who has presided over a prehearing conference which does not result in a resolution of all alleged discipline defaults against a respondent, shall not preside over the subsequent discipline proceeding mandated by s. 58.1(1)(a). I would not go so far as to require that such discipline proceeding be presided over by a chief or deputy chief constable of another municipal department, as all municipal departments have at least two discipline authorities. However, a wise exercise of discretion on the part of a discipline authority who is faced with the mandatory requirement of such an amendment, may well require that an external discipline authority be appointed, particularly in those smaller departments in which there is a natural tendency for a close relationship to develop between all ranks. In order to ensure that wise exercise of discretion, s. 58.1 of the *Act* should be further amended to provide that a discipline authority may request a chief or deputy chief constable of another municipal department to preside over a discipline proceeding.

264. The other side of the partiality concern must also be addressed. The submission of the BCAMCP, made in response to the White Paper and its attached draft Police Complaint Act, suggests the proposed power of the police complaint commissioner to order an external discipline authority at any time is overly broad and, if exercised, could well have the effect of undermining the authority of the chief constable to promote good discipline.[129]

265. The police complaint commissioner already has the power to order an external investigation into a public trust complaint, under s. 55.1(1)(b), if he considers such an order to be necessary in the public interest. This power exists notwithstanding the mandatory duty of a discipline authority to refer such an investigation to another municipal police department, or to the commissioner,[130] if he or she considers an external investigation is necessary in order to preserve public confidence in the complaint process. I view public confidence in the complaint process as the paramount consideration when applying the public interest test wherever it is mandated in Part IX.

266. The police complaint commissioner also already has a discretionary power, under s. 60(4) of the *Act*, which may be exercised at any time after an investigation has been completed, to order a public hearing in circumstances where he considers there are grounds to believe that such is necessary in the public interest. As well, s. 58.1(2) acknowledges the power of the police complaint commissioner to "arrange" a public hearing with respect to a public trust complaint that is the subject of a pending or ongoing discipline proceeding under s. 58.1(1). The effect of such an "arrangement", of course, is to replace the discipline authority with an adjudicator appointed under s. 60.1(2).

267. In his Green Paper, the police complaint commissioner acknowledges that the proposed power to appoint an external discipline authority would only be required to be exercised in "exceptional circumstances."[131] Viewed reasonably, the exceptional circumstances to which he refers would be those in which public confidence in the complaint process would be undermined if there exists, for whatever reason, a reasonable apprehension of bias on the part of a presiding discipline authority. In other words, the very circumstances which the police complaint commissioner suggests would justify the exercise of

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[129] Supra note 8, p. 9.

[130] The "commissioner" is defined in s. 1 of the *Act* as the commissioner of the provincial police force.

[131] Supra note 73, p. 8.

the proposed power to appoint an external discipline authority, are the same circumstances in which he already has the power to order a public hearing.

268. Thus, the proposed power to order an external discipline authority, albeit in the form of an adjudicator, is already in Part IX. However, given what has already been said about the efficacy of public hearings, it seems to me that appointing an external discipline authority, who would conduct a much simpler, more streamlined discipline proceeding, is a far more effective, and therefore preferable, way of supporting public confidence in the complaint process.

269. That said, I understand the concern expressed by the BCAMCP that the exercise of such a power by the police complaint commissioner may have, at least the appearance, if not the effect, of undermining the discipline authority of a chief constable who would otherwise preside over the conduct of the discipline hearing in question. However, as I understand to be the case when the police complaint commissioner feels an external investigation is required in any given case, I would expect that, before exercising the power to order an external discipline authority, the police complaint commissioner would first consult with the discipline authority in question, thus providing the latter with the opportunity, on his or her own initiative, to request a chief or deputy chief constable from another municipal department to preside over the pending discipline hearing.

270. I accept the police complaint commissioner's proposal that he have the power to order that the function of discipline authority be exercised by a chief or deputy chief constable from another municipal department. However, I would limit the exercise of that power specifically to the conduct of the discipline proceeding and, rather than using the language in which the justification for the exercise of that power is cast in s. 9(13) of the draft Police Complaint Act, I would recommend language which parallels that found in s. 55.1 of the *Act* in relation to the duty of the discipline authority to require, and the concurrent power of the police complaint commissioner to order, an external investigation.

271. Accordingly, I recommend that s. 58.1 of the *Act* be amended to provide:

   (a) A discipline authority who has presided over a prehearing conference that has not resulted in the resolution of all discipline defaults alleged against a respondent, shall not preside over the subsequent discipline proceeding mandated by s. 58.1(1)(a).

   (b) A discipline authority may, at any time and for any reason, require that a chief or deputy chief constable of another municipal department preside over a discipline proceeding mandated by s. 58.1(1)(a).

   (c) A discipline authority must refer a discipline proceeding into a public trust complaint to a chief or deputy chief constable of another municipal department if he or she considers that such a referral is necessary in order to preserve public confidence in the complaint process, or if the police complaint commissioner so orders.

   (d) The police complaint commissioner may make an order that a discipline proceeding be presided over by the chief or deputy chief constable of another municipal department if he considers that such is necessary in the public interest.

272. Section 58.1(3) gives the complainant the right, prior to the commencement of a discipline proceeding, to make written or oral submissions to the discipline authority respecting the complaint, the adequacy of the investigation and the range of disciplinary or corrective measures that should be considered. Curiously, there is no requirement in s. 58.1(1)(b) that the notice to the complainant, advising of the discipline proceeding, also advise the complainant of this right and, in the case of oral submissions,

how, where and to whom such might be made. In my view, such notice should be provided to the complainant. As well, I am of the view that if the complainant chooses to make oral submissions with respect to the matters set forth in s. 58.1(3), those submissions should be recorded and transcribed and form part of the record in the subsequent discipline proceeding. Finally, the police complaint commissioner has suggested that a discipline proceeding must be conducted within 60 days from the date on which the discipline authority was served with the final investigation report.[112] This is a sensible suggestion which I would adopt.

273. Accordingly, I recommend that s. 58.1(1)(b) be amended to provide that the notice to the complainant of a discipline proceeding include notice of the right to make written or oral submissions to the discipline authority respecting the matters set out in s. 58.1(3), and the manner in which oral submissions can be made. I further recommend that s. 58.1(3) be amended to provide that any oral submissions be recorded and transcribed and that a copy of any written submissions, or the transcript of any oral submissions, shall form part of the record at the subsequent discipline proceeding. Finally, I recommend that s. 58.1 of the *Act* be amended by adding a requirement that a discipline proceeding must be convened within 60 days of the date upon which the discipline authority received the final investigation report.

K. CONDUCT OF THE DISCIPLINE PROCEEDINGS

274. While the discipline proceeding, as currently structured in s. 59 of the *Act* would likely survive a challenge under s. 7 of the *Charter of Rights and Freedoms*, alleging denial of the principles of natural justice,[113] it is apparent that s. 59(2) has been interpreted as preventing a respondent from testifying at a discipline proceeding on his or her own behalf. The effect of such a construction, together with the adverse inference provided for in s. 61.1(1) of the *Act*, would clearly offend even the most primitive view of procedural fairness. While I do not believe that s. 59 and s. 62.1(1), when read together, were intended to prevent a respondent from testifying, any ambiguity in that regard must obviously be eliminated.

275. However, it is clear that the language of s. 59(2) was intended to prevent any other evidence being led on behalf of a respondent and, indeed, any witnesses being called apart from the investigating officer who prepared the final investigation report.

276. While the submissions to the Special Committee of the Legislature, together with views expressed to us during the interviews conducted, contain many different, and in some cases conflicting, recommendations for changes to the discipline proceeding, there is general acceptance of the view that the respondent ought to be able to present evidence on his or her own behalf. In his draft Police Complaint Act the police complaint commissioner would go further and make the respondent a compellable witness at such a proceeding.[114] The BCAMCP has suggested that the discipline authority should have the option of either holding an oral hearing (as opposed to a proceeding) or making a decision on the basis of written submissions, as opposed to being required to hold a hearing with "more significant procedural protections" depending on the degree of the proposed disciplinary and/or corrective measures.[115]

277. In approaching the many different views expressed on how a discipline proceeding should be structured, I have been guided by two essential considerations. The first is that the extent to which procedural

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[112] Supra note 10. See: s. 34(7).

[113] See: *Landry v. Gaudet* (1992), 95 D.L.R. (4th) 289 and *Vanovermeire v. Edmonton (City) Police Commission* (1993), 9 Alta. L.R. (3rd) 396.

[114] Supra note 10. See: ss. 34(3) and (4) and s. 40(1).

[115] Supra note 8, p. 14.

fairness is made available to a respondent facing a disciplinary proceeding, should be governed more by what it is possible to provide without undermining the discipline authority of the chief constable, rather than by any strict adherence to what the law says is the minimum standard required to avoid a successful judicial review. The second is that the discipline proceeding should be structured in such a way as to enable a more expeditious and less costly form of public review to be utilized as an alternative to that form of public hearing which is presently provided for in Part IX. As will be described in greater detail below, I am recommending that a public review, in the form of a review on the record, be included as an option available to the police complaint commissioner where he considers that there is a reasonable basis to believe that the final disposition of a public trust complaint is wrong. In order for that type of public hearing to produce a result that is both fair and reasonable to all in whose interest it is sought, there must be a sufficient record to enable a meaningful review to be conducted.

278. In the result, I favour the suggestion by the BCAMCP that there should be different degrees of procedural fairness made available to a respondent who faces a discipline proceeding, based upon the degree of the proposed disciplinary and/or corrective measures which that respondent is facing.

279. At a minimum, and irrespective of the proposed disciplinary and/or corrective measures, I can see no justification for denying a respondent the right to produce evidence at a discipline proceeding on his or her own behalf, whether in the form of voluntary *viva voce* testimony or otherwise. Assuming that the recommendations regarding the compellability of statements from respondent and witness officers is accepted, I see no need to require that a respondent be a compellable witness at a discipline hearing, again irrespective of the nature of the proposed disciplinary and/or corrective measures.

280. Where the proposed disciplinary and/or corrective measures include either reduction in rank or dismissal, I am of the view that the respondent should have the right to what the BCAMCP properly characterizes as a hearing rather than a proceeding, supported by procedural rights including the right to disclosure of the complete final investigation report, any separate reports prepared respecting the investigation and any other relevant written records including any written submissions, or the transcript of any oral submissions, made by the complainant pursuant to s. 58.1(3) of the *Act*, the right to be represented by counsel or an agent, the right to cross-examine any witness, including the complainant, whose evidence is referenced in the final investigation report, and the right to make full submission following conclusion of the evidentiary phase of the hearing. Either a senior officer, or the discipline authority who reviewed the final investigation report and whose disciplinary recommendation has led to the hearing, would logically be the person to present the case before the presiding discipline authority and would be entitled to lead evidence and make submissions in support of the recommended disciplinary and/or corrective measures.

281. In the case of all other disciplinary proceedings, where the proposed disciplinary and/or corrective measures include anything less than reduction in rank the respondent would again be entitled to full disclosure of the complete final investigation report, any separate reports prepared respecting the investigation and any other relevant written records including any written submissions, or the transcript of any oral submissions, made by the complainant pursuant to s. 58.1(3) of the *Act* and the right to be represented by counsel or an agent. However, the right to cross-examine would be confined to the investigating officer and would not include any witness named in the final investigation report, including the complainant unless, in the opinion of the presiding discipline authority, such cross-examination was necessary in order to resolve conflicting evidence material to the ultimate outcome of the disciplinary proceeding. However, as noted, the respondent would be entitled to produce evidence on his or her own behalf and would, of course, be entitled to make full submissions following the conclusion of the

evidentiary portion of the discipline proceeding, As with the previously described proceeding, either a senior officer, or the discipline authority who received and reviewed the final investigation report and who presided over the prehearing conference if such conference was held, would present the case before the presiding discipline authority, and would be entitled to lead evidence and make submissions in support of the proposed disciplinary and/or corrective measures.

282. In the case of all disciplinary proceedings, the presiding discipline authority must be entitled to retain the assistance of legal counsel. A full record must be kept of the discipline proceeding, which means that all oral proceedings must be recorded and all written materials marked as exhibits, such that in the end a full and accurate record of the entire proceeding is available for review by the police complaint commissioner.

283. As previously noted, assuming that the recommendation regarding compellability of statements from all respondent and witness officers is accepted, I see no need to require that a respondent at a discipline hearing be compelled to give evidence, or to answer questions from either the presiding or the presenting discipline authorities. However, I see no reason why the presiding discipline authority should not be entitled to draw an adverse inference in any instance where there is an absence of evidence, which the respondent could reasonably be expected to adduce, and which is considered by the presiding discipline authority to be material to the ultimate disposition of the discipline proceeding. Finally, in order to avoid any doubt on the matter, a presiding discipline authority should have the statutory authority, at any time, to order that the discipline proceeding be adjourned and that a further investigation be undertaken if, in his or her opinion, such further investigation is necessary in the public interest.

284. In summary, I recommend that s. 59 of the *Act* be amended so as to provide that:

(a) In the case of a discipline proceeding into an alleged public trust default where the proposed disciplinary measures include either a reduction in rank or dismissal, the respondent shall be entitled to:

   (i) full disclosure of the complete final investigation report, any separate reports prepared respecting the investigation and any other relevant written records including any written submissions, or a transcript of any oral submissions, made by the complainant pursuant to s. 58.1(3) of the *Act*, all of which should be filed as exhibits in support of the alleged public trust default and proposed disciplinary measures;

   (ii) be represented by counsel or an agent;

   (iii) in addition to cross-examining the investigating officer, to require the attendance for cross-examination, and to cross-examine, any witnesses, including the complainant, named in the final investigation report;

   (iv) to present evidence on his or her own behalf; and

   (v) to make full submissions following the conclusion of the evidentiary phase of the discipline proceeding, including with respect to those matters referenced in s. 59(3)(b) of the *Act*.

(b) In the case of a discipline proceeding conducted with respect to an alleged public trust default where the proposed disciplinary and/or corrective measures include anything less than reduction in rank, the respondent shall be entitled to all of (i), (ii), (iv) and (v) above, but the right of cross-examination shall be confined to cross-examining the investigating officer unless, in the opinion of the presiding discipline authority, the cross-examination of a witness named in the final investigation report is necessary in order to resolve conflicting evidence material to a proper disposition of the alleged public trust default.

(c) A discipline authority who presides over the discipline proceeding shall be entitled to the assistance of legal counsel both during and subsequent to the discipline proceeding, including with respect to the preparation of the formal disposition record.

(d) In addition to the electronic recording of the discipline proceeding, provided for in s. 59(4) of the *Act*, a full record of the discipline proceeding, including all exhibits filed, shall be prepared.

(e) The discipline authority presiding over a discipline proceeding may adjourn the proceeding and order that a further investigation into the conduct of the respondent be undertaken, if in his or her opinion such further investigation is warranted and necessary in the public interest.

285. In his draft Police Complaint Act, the police complaint commissioner has proposed that discipline proceedings be held in camera.[136] Given the increased oversight powers I am recommending be given to his office, I think that is an appropriate suggestion. Accordingly, I recommend that s. 59 of the *Act* be further amended to provide that all discipline proceedings be held in camera.

L. REQUEST FOR A PUBLIC HEARING, ORDERING PUBLIC HEARINGS AND PUBLIC HEARING PROCEDURES

286. As indicated in the previous section, I am recommending that an additional, alternative form of public hearing be introduced into Part IX of the *Act*. Rather than attempting to design all of the substantive and consequential amendments to ss. 60, 60.1 and 61, that would flow from such a recommendation if implemented, I have elected to leave that task to those who have the specialized drafting talents required to give effect to the essence of what I am proposing. In addition, of course, I will offer some thoughts on, and recommendations for, changes to the existing public hearing process.

287. In the eight-and-a-half years since Part IX came into effect, there have been only 13 public hearings "arranged" by the police complaint commissioner.[137] This small number reflects the fact that for a number of reasons the present public hearing process is not a useful remedy in circumstances where the police complaint commissioner considers the disposition of a public trust complaint by a discipline authority to be inappropriate.

288. To begin with, as previously noted, the threshold test in s. 60(5) for ordering a public hearing, is very high. Not every error in the disposition of a public trust complaint will necessarily undermine public confidence in the complaint process. Yet each is of singular importance to both the complainant and respondent(s) involved, and there is no doubt that if such errors are not properly corrected, they will become systemic and eventually their cumulative effect will bring the complaint process into disrepute. Thus, there needs to be some public hearing process by which the disposition of a public trust complaint, which the police complaint commissioner believes to be wrong, can be reviewed even though that disposition, by itself, is not likely to undermine the public's confidence in the complaint process. Furthermore, and again as has been noted, the current public hearing process has proven to be time consuming, costly and in some cases fraught with much public controversy. For the most part, they amount to what, in different circumstances, lawyers would refer to as a trial *de novo* where, irrespective of what process has previously taken place, a full evidentiary hearing takes place before the adjudicator followed by submissions and then, usually, a reserved decision. Given the schedules of

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[136] Supra note 10. See: s. 35(5).

[137] That number includes 1 that is currently ordered but not yet concluded.

counsel, and the length of time that must be reserved for such a hearing, it more often than not takes place at least a year or more after the disposition in issue was recorded.

289. For all these reasons, the police complaint commissioner is necessarily discouraged from ordering a public hearing in any but the most egregious of public trust complaints. Thus, as the audit we conducted revealed, instances will arise where the disposition of a public trust complaint will clearly be wrong, and yet no practical or effective remedy will be available to the police complaint commissioner to rectify the error.

290. As noted, The BCCLA has responded to these perceived inadequacies in the current public hearing process by recommending that the police complaint commissioner have the authority to substitute his own decision for that of a discipline authority both with respect to the nature of the conduct complained of and with respect to any corrective and/or disciplinary measures imposed. I have previously recommended that the s. 57.1(1)(b) decision of a discipline authority be subject to the police complaint commissioner's discretion to order that it be reviewed in a discipline proceeding to be held before a chief or deputy chief constable of a different municipal police department. However, there remains for consideration the ss. 58(5) and 59(5) and (6) decisions of a discipline authority.

291. I agree with the BCCLA that some form of review of those decisions, short of the current public hearing process, is required. However, I am inclined to the view that it too should be a form of public process, with the role of the police complaint commissioner more properly confined to identifying those instances where such a process is required.

292. The public process I have in mind is one that would take place before an independent adjudicator. It would, in fact, be a review based on the record below, with the proviso that, in exceptional circumstances, the adjudicator could receive additional evidence. The parties entitled to appear at such a public review would be the police complaint commissioner, who through counsel has carriage of the review, and the respondent. Each party would be entitled to make submissions, with the police complaint commissioner bearing the onus of satisfying the adjudicator that the proposed complaint disposition below was wrong. The standard of review would be that of correctness.

293. The test governing the police complaint commissioner's decision to order what I shall refer to as a "public review," would be the existence of a reasonable basis to believe the decision as to either the nature of the conduct, or the proposed corrective and/or disciplinary measures, is wrong. However, he may also order a public review when he considers there are grounds to believe that such a hearing is necessary in the public interest. In other words, in all cases where a public hearing is either requested by a complainant or respondent, or for any reasons considered by him to be necessary in the public interest, the police complaint commissioner will have the option of choosing the form of public process he believes will be the most effective in all the circumstances.

294. Resort to this proposed public review would be available following both the proposed resolution of a public trust complaint at a prehearing conference under s. 58(5) and the proposed disposition of a public trust complaint, under either ss. 59(5) or (6) following a discipline proceeding.

295. In the case of a s. 58(5) resolution of a public trust complaint at a prehearing conference, which the police complaint commissioner considers to be wrong, the record available for a public review hearing would consist of the final investigation report, including any records, documents or information relevant to the complaint, as provided by the discipline authority to the police complaint commissioner, under s. 57(2) as amended pursuant to my recommendation, and the discipline authority's report under s. 58(5) of the

Act. In such a case, the conclusion of the adjudicator, following submissions from the parties, on both the nature of the conduct and the appropriate corrective and/or disciplinary measures that should be imposed, should be considered final. This result can be justified by the fact that the respondent, by agreeing at the prehearing conference to the disposition from which the review is taken, must be presumed to have accepted the content of the final investigation report as accurately reflecting both the nature of the conduct complained of and the circumstances in which it occurred.

296. In the case of a public review hearing following a discipline proceeding, the full record of the discipline hearing will be the basis upon which an adjudicator can reach a fair and reasonable conclusion whether the decision of the discipline authority in respect of both the conduct complained of and/or the corrective and/or disciplinary measures imposed were correct.

297. I have considered the current provisions of s. 60(3) of the *Act*, which impose a mandatory duty on the police complaint commissioner to order a public hearing in certain circumstances. Dealing first with s. 60(3)(a), we heard virtually unanimous opinion from everyone we interviewed that a respondent's automatic right to a public hearing, in the event of a proposed corrective and/or disciplinary measure more severe than a verbal reprimand, could not be justified. I agree. I note that s. 58(2)(a), which prohibits a prehearing conference in any case where the complaint against the respondent is sufficiently serious to warrant dismissal or a reduction in rank, is consistent with my recommendation as to the appropriate point on the proposed penalty scale where a respondent is entitled to substantial procedural protection at a discipline proceeding. In my view, a similar threshold would be appropriate for a respondent's automatic right to a public hearing. In respect of all other proposed corrective and/or disciplinary measures, of course, the respondent has an unencumbered right to request a public hearing.

298. A curious aspect of ss. 60(3) and (4) is the subtle distinction which is drawn between the situation where the police complaint commissioner determines, under s. 60(3)(b), that there are grounds to believe that a public hearing is necessary in the public interest, in which case he is bound to order a public hearing, and where he considers, under s. 60(4), that there are grounds to believe that public hearing is necessary in the public interest, in which case he has a discretion whether or not to order a public hearing. The police complaint commissioner is the guardian of the public interest, insofar as the complaint process is concerned. He is in the best position to determine when a public hearing is necessary. In my view he does not need statutory guidance in that respect other than that which flows from the public interest test which is dominant throughout Part IX. Thus, I am of the view s. 60(3)(b) be deleted.

299. From the way Part IX is presently structured, a proposed disposition of a public trust complaint, whether under s. 57.1(1)(b), s. 58(5) or ss. 59(5) and (6), does not become final until a decision is made by the police complaint commissioner not to arrange for a public hearing.[138] While both the complainant and respondent must request a public hearing within 30 days of certain triggering events, all of which are temporally close to the disposition of a public trust complaint,[139] there is no time limit on the police complaint commissioner's decision whether to respond to such a request by ordering a public hearing, and in particular, no time limit within which he must decide on his own motion whether to make such an order. Thus, both complainant and respondent can potentially be left in an indefinite state of uncertainty until such time as the police complaint commissioner's decision in that regard is made known.

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[138] Supra note 1. See: ss. 57.1(4), 58(7) and 59.1(4), respectively.

[139] Ibid. See: s. 60(1).

300. During the interviews we conducted, this obvious lacuna in the *Act* was repeatedly drawn to our attention. In his draft Police Complaint Act,[140] the police complaint commissioner has recognized this deficiency. However, he suggests that his decision whether to order a public hearing be made within 90 business days of a request for one from either the complainant or the respondent and within 120 business days when acting on his own motion.

301. In my view these time limits are excessive, particularly when taking into account that a business day would not include either Saturday or Sunday. Under this proposal, both complainant and respondent could theoretically wait five-and-a-half months before the police complaint commissioner made a decision on his own motion to hold a public hearing, during which time both could be forgiven for believing that the matter had long since been finally concluded. I am of the view that it should be possible for the police complaint commissioner to make such a decision in much less time, particularly if the recommended integrated IPDMA system is adopted. Ordinarily, one would expect such a decision to be made within 30 days. But in deference to the police complaint commissioner's assessment of the current workload in his office, which is implicit in his suggested time limits, I would double that time period. In my view any decision to order either a public review or a public hearing, whether prompted by a request from either the complainant or the respondent, or made on his own motion, should be made by the police complaint commissioner within 60 days of the proposed disposition of a public trust complaint under ss. 57.1(1)(b), 58(5) and 59(5) or (6).

302. There are several other recommendations in the police complaint commissioner's draft Police Complaint Act which merit consideration. In s. 37(7), he proposes a power in his office to reopen a decision not to hold a public hearing if he is satisfied that new or additional information has emerged which warrants holding such a hearing. In s. 37(10) he suggests that the police complaint commissioner should provide written reasons for refusing a public hearing. In s. 37(11) he proposes that the police complaint commissioner should be able, at any time, to cancel a public hearing he has ordered on his own motion, under present ss. 60(3)(b), 60(4) or 60(7). In ss. 37(12), (13) and (14), he proposes that the police complaint commissioner cancel a public hearing which was either mandated by what is presently s. 60(3)(a,) or ordered as a result of a request by a respondent, if the respondent so requests, in which event the respondent shall be deemed to have accepted the discipline proposed by the discipline authority. All these with the exception of the reference to s. 60(3)(b) which I have suggested be deleted, are sensible suggestions with which I agree.

303. Turning to the present s. 60.1, under the heading Ordering Public Hearing, the current process for appointing an adjudicator must be changed in order to ensure that the adjudicator appointed not only is, but is perceived to be, independent of any influence emanating from the office of the police complaint commissioner. As a result of, and since, the decision in *Doern v. Police Complaint Commissioner*, (2001) 203 D.L.R. (4th) 295 (B.C.C.A.), the practice that has been followed is for the police complaint commissioner to request that the Associate Chief Justice of the British Columbia Supreme Court appoint a retired judge from one of the Courts listed in s. 60.1(2). That process has worked reasonably well and s. 60.1(2) should be amended accordingly.

304. If my recommendation for the addition of the proposed public review is implemented, I would expect there would be an increase in the demand for suitable adjudicators. In discussions with the Associate Chief Justice of the British Columbia Supreme Court, he expressed a concern that, if there was a

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[140] Supra note 10. See: s.37(6).

significant increase in the number of adjudicators needed, the current pool of retired judges willing to accept such an appointment may not be sufficient to meet the demand.

305. With that in mind, I met with the Chief Judge of the Provincial Court to discuss the possibility of reviving the proposal advanced, when Part IX was first introduced, namely that current active judges of that Court be appointed as adjudicators. The Chief Judge advanced concerns of a constitutional nature with the prospect of judges of the Provincial Court presiding over administrative tribunals created by the Executive Branch, but expressed a strong desire to work with the Attorney General to explore ways in which his judges might be able to undertake such tasks as part of an initiative to create a more expedited process for determining civil complaints than presently exists under the *Small Claims Act* and *Rules*.[141] In light of that discussion I would not recommend that judges of the Provincial Court be included as potential adjudicators in s. 60.1. However, I would urge the Attorney General to explore the possibilities suggested by the Chief Judge, as the benefits to be derived from having judges of that Court available, or even assigned full responsibility, for such adjudications seems obvious.

306. In his draft Police Complaint Act, the police complaint commissioner suggests that what is presently s. 60.1 be amended to provide that if an adjudicator who has been appointed is, for any reason, unable to continue to preside over a public hearing, a new adjudicator shall be appointed to continue with the hearing and may do so after reviewing a transcript of the evidence given to that point in time unless he or she determines that it is necessary to rehear some or all of such evidence.[142] This is a sensible proposal with which I agree.

307. With respect to the public hearing process, the police complaint commissioner has made a number of suggestions for amendment to the present procedures described in s. 61. Most have to do with the role of his counsel, the respondent and the complainant, matters which are touched upon but briefly in s. 61.

308. Rather than review those recommendations in detail, I propose to set out what I see as the proper scope of the role for each of those parties in a s. 60 public hearing. I have already described the respective roles of the respondent and counsel representing the police complaint commissioner in a public review. Turning to the public hearing, both the police complaint commissioner, through counsel, and the respondent, either in person or through counsel or an agent, must have the ability to present their respective cases in full. That necessarily involves the right to call witnesses, to introduce evidence, to cross-examine the witnesses presented by the party opposing and to make full submissions at the conclusion of the evidence. There can be no reasons to curtail any of these procedural rights simply because the hearing is properly characterized as administrative rather than penal.

309. The prevailing opinion is that the adjudicator is in the best position to know whether there are compelling reasons to permit the complainant some greater degree of participation in such a hearing than is presently provided for in ss. 61(4)(b) and (c). Accordingly, s. 61 should be amended to provide the adjudicator with the discretion, on application, to permit the complainant such level of participation in the hearing process as he or she thinks is necessary in order to ensure that the public hearing can achieve a proper result.

310. In s. 39(10) of his draft Police Complaint Act, the police complaint commissioner proposes that the adjudicator have the power to grant intervener status to any person who he or she is satisfied has a

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[141] *Small Claims Act*, R.S.B.C. 1996, c. 430 and amendments thereto; and *Court Rules Act and Small Claims Act, Small Clams Rules*, B.C. Reg 261/93.

[142] Supra note 10. See: ss. 38(5) and (6).

"legitimate interest" in the hearing and can make a valuable contribution to its outcome, such intervener to have the ability only to make submissions following the evidentiary portion of the hearing. In my view, any person who the police complaint commissioner's counsel believes can make such a valuable contribution to the outcome of the hearing can either be called as a witness or provide counsel with their input in such a way that counsel can put their views before the adjudicator during the course of submissions. There is no need to encumber the public hearing process with yet another procedural layer, which is only likely to result in longer, more protracted hearings.

311. Apart from those and such general provisions as are already provided for in s. 61, I am of the view that the adjudicator should have full discretion to conduct the public hearing, making whatever procedural and evidentiary decisions as appear to be reasonable and necessary for the attainment of a just result. I recommend that such a provision be included in s. 61 in language that is sufficiently broad and all-encompassing, such that there can be no doubt about the adjudicator's authority to control the public hearing process so that its object can properly be achieved. Such a provision would obviate the need to include in s. 61 a plethora of specific powers which, by their very inclusion, would reinforce an argument that the adjudicator's powers are limited to those listed.

312. In s. 39(3) of his draft Police Complaint Act, the police complaint commissioner has included a provision that would enable him, or his counsel, to undertake such inquiries or investigations as are considered necessary to present the case to the adjudicator. If the recommended power of the police complaint commissioner to contemporaneously oversee an investigation into a public trust complaint, together with the authority to give advice and, if necessary, direction with respect to the conduct of that investigation is implemented, no such investigative power should be required. Prior to embarking upon a public hearing, there is nothing to prevent counsel for the police complaint commissioner from engaging in the normal preparatory steps, such as interviewing witnesses and otherwise marshalling the evidence, but where counsel considers that further or better evidence is required in connection with some part of the case to be presented to the adjudicator, the proper course is to require that further investigative steps be undertaken, either by the investigating officer who conducted the original investigation or, if necessary, by an investigator from another municipal department or the provincial police force.

313. In ss. 39(11) and (12) of his draft Police Complaint Act, the police complaint commissioner proposes powers that would enable an adjudicator to order a publication ban, that some or all of a public hearing be held in camera, and that all or part of the evidence of any witness or other evidence be received in confidence to the exclusion of one or more of the parties to the hearing. If the recommended provision giving the adjudicator full discretion with respect to the conduct of a public hearing is implemented, these powers do not need to be specifically set forth in s. 61. The same is true with respect to the balance of the proposed changes to the present s. 61, as described in s. 39 of the police complaint commissioner's draft Police Complaint Act.

314. However, I do agree with and support the underlying rationale for the proposal in s. 39(17) of the police complaint commissioner's draft Police Complaint Act to the effect that the cost of a public hearing incurred by his office be paid out of the consolidated revenue fund. To be effective, the process of civilian oversight must be properly funded. A number of the recommendations I have made, if implemented, will add to the number of public hearings. It is impossible to provide for the contingency of such hearings when preparing an annual budget, as there is no way of knowing how many such hearings may be ordered in the course of the forthcoming fiscal year. I agree with the police complaint commissioner when he asserts that his discretion to order a public hearing, or a public review if that recommended

form of public hearing is implemented, should never be fettered or compromised by a lack of funds. However, neither would I propose to interfere with the Minister of Finance's discretion with respect to the consolidated revenue fund. Thus, I would recommend that funding for public reviews and public hearings not form part of the annual budget of the office of the police complaint commissioner, but be provided for separately, leaving it to the Legislature to decide how best that funding should be arranged.

315. In s. 39.1 of the police complaint commissioner's draft Police Complaint Act, he proposes that an adjudicator have the power, on application of his counsel, the respondent or on his own motion, to order an assessment of the mental or physical condition of a respondent and to conduct what is described as a fitness hearing. No explanation is offered to support the need for such a specific power and during the course of our review we did not become aware that issues regarding the mental fitness of a respondent had ever arisen such as to require specific mention in the statute. Again, if the adjudicator is given full discretionary powers, with respect to the conduct of a public hearing, while such discretion may not include the power to require the respondent to submit to a medical assessment, it would most certainly include the power, indeed the obligation, to enquire into the fitness of the respondent and make any orders with respect to the continuation of a public hearing as would appear necessary in the circumstances.

316. In summary, with respect to present ss. 60, 60.1 and 61 I recommend that:

(a) Part IX of the *Act* be amended to provide for a public review of a decision made pursuant to ss. 58(5) and 59(5) and (6), as an alternative to a public hearing under s. 60.

(b) The police complaint commissioner have the discretion, on receipt of an application made pursuant to ss. 58(6) and 59.1(3), or on his own motion, to order a public review rather than a public hearing.

(c) The police complaint commissioner may order a public review if he considers either that there is a reasonable basis to believe the disposition of a public trust complaint by a discipline authority, including the imposition of corrective and/or disciplinary measures, if any, is wrong, or if he considers that there are grounds to believe such a review is necessary in the public interest.

(d) The public review shall be presided over by an adjudicator appointed under s. 60.1(2) of the *Act*, and shall be confined to the record upon which the discipline authority made the decision(s) being reviewed, including any records, documents or information provided by the discipline authority to the police complaint commissioner under s. 57(2), subject to the power of the adjudicator in exceptional circumstances to admit additional evidence.

(e) The police complaint commissioner, or his counsel, and the respondent, either in person or through counsel or an agent, shall have standing to appear at a public review and make submissions based upon the record which is before the adjudicator.

(f) The standard of review at a public review is that of correctness and at the conclusion of the review the adjudicator shall

  (i) confirm the decision(s) of the discipline authority, or

  (ii) substitute his own decision(s) for any decision(s) of the discipline authority which he believes to be wrong.

(g) In the case of a public review of a decision of a discipline authority under ss. 58(5) or 59(5) and (6), the decision of the adjudicator shall be final and conclusive and not open to question or review by a Court on any ground.

(h) Section 60(3)(a) be amended to provide that the police complaint commissioner must arrange either a public review or a public hearing if the request for a public hearing is made by a respondent with respect to whom a disciplinary measure of reduction in rank or dismissal has been proposed.

(i) Section 60(3)(b) be deleted.

(j) The police complaint commissioner shall be required to make a decision on his own motion whether to order a public review or a public hearing within 60 days of receiving a notice under s. 58(5)(a) or the date upon which he either receives notice under s. 59.1(6) or he receives further reasons from the discipline authority under s. 59.1(2)(a), or within 60 days of receiving a request for a public hearing under ss. 58(6) or 59.1(3).

(k) The police complaint commissioner may at any time reopen a decision by him not to order a public review or a public hearing if new or additional information becomes available which, in his opinion, requires such decision to be reconsidered.

(l) The police complaint commissioner must provide written reasons for refusing a request for a public review or public hearing.

(m) The police complaint commissioner may at any time cancel an order for a public review or public hearing which he has made on his own motion.

(n) The police complaint commissioner may, in his discretion, cancel a public review or public hearing ordered at the request of a respondent, if the respondent so requests, in which event the decision of the discipline authority from which the order for the public review or public hearing was made shall become final and conclusive and shall not be open to question or review by a Court on any ground.

(o) Section 60.1(2) be amended to provide that if the police complaint commissioner orders a public review or public hearing he shall request the Associate Chief Justice of the British Columbia Supreme Court to appoint a retired judge of the Provincial Court, the British Columbia Supreme Court or the Court of Appeal to preside as adjudicator at the public review or public hearing.

(p) Section 60.1 be amended to provide that, if an adjudicator appointed under ss. (2) is unable for any reason to continue or complete a public review or public hearing, the police complaint commissioner shall request the Associate Chief Justice of the British Columbia Supreme Court to appoint a new adjudicator who shall continue with the public review or the public hearing, as the case may be, after either reviewing a transcript of the previous proceedings or rehearing part or all of the previous proceedings.

(q) Sections 61(3) and (4) be amended to reflect that:

    (i) both the police complaint commissioner, through counsel, and the respondent, either in person or through counsel or an agent, shall have the right to present their respective cases in full, including without limitation, the right to call and cross-examine witnesses, introduce evidence, and make full submissions at the conclusion of the evidence; and

    (ii) upon application by or on behalf of the complainant, the adjudicator may make such order as to the further participation of the complainant in the public hearing as in his or her opinion it is necessary to ascertain the truth.

(r) Section 61 be amended to provide that an adjudicator who presides over a public hearing shall have full discretion to conduct such hearing in whatever manner he or she thinks is necessary to achieve a just result and to make whatever procedural and evidentiary decisions at such a hearing as are necessary to ensure that such result is achieved.

(s) The cost of public hearings, including the cost of the police complaint commissioner's counsel retained for the purpose of such a hearing, shall not form part of the annual budget of the office of the police complaint commissioner but shall be provided for in a separate fund to be established by the Legislature.

M. COMPELLABILITY

317. I have previously dealt with the compellability of a respondent both to provide a statement and to submit to an interview when called upon to do so by an investigating officer. In the circumstances I see no need to make the respondent compellable at either a discipline hearing or a public hearing. Thus, as I have indicated, I would not endorse the police complaint commissioner's proposals in ss. 40(1), (2) and (3) of his draft Police Complaint Act. Section 61.1(3) of the *Act*, as presently drafted, would, in fact, support the compellability of the respondent at a public hearing. Accordingly, I recommend that s. 61.1(3) be amended so as to ensure that it does not include a respondent at either a discipline proceeding or a public hearing into a public trust complaint.

VII. DIVISION 5 – SERVICE OR POLICY COMPLAINTS

A. SERVICE OR POLICY COMPLAINTS

318. As noted by the police complaint commissioner in his White Paper, and reflected in s. 42(4) of his draft Police Complaint Act, the Special Committee of the Legislature recommended an amendment to s. 63 of the *Act* which would prohibit a police officer from making a service or policy complaint where the subject matter of the complaint is grievable under his or her collective agreement.[143] That proposal, which was endorsed in submissions made before the Special Committee of the Legislature by both the BCAMCP and the Vancouver Police Board, is non-contentious and I would recommend such an amendment to s. 63 of the *Act*.

B. INVESTIGATION OF SERVICE OR POLICY COMPLAINTS

319. The police complaint commissioner also recommends, in ss. 43(6), (7) and (8) of his draft Police Complaint Act, that time limits be placed both on the right of a complainant to request that he review the decision of a police board under s. 63.1(5), and on the duty of the police complaint commissioner to complete such a review, irrespective of whether the review was initiated as a result of a request from the complainant. I agree that time limits are needed in both cases and I agree also with the suggested time limits within which a complainant must request such a review, although I would make that 30 days rather than 30 business days. However, as I have previously noted, a proposed time limit of 120 business days for the completion of any review by the police complaint commissioner is simply too long. I recommend that the police complaint commissioner be required to complete a review of a police board's decision under s. 63.1(5) of the *Act*, whether that review was requested by a complainant or undertaken on his own motion, within 60 days from the date that decision was received in the office of the police complaint commissioner.

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[143] Supra note 4, p. 15. See also Special Committee recommendation 17.

VIII. DIVISION 6 – INTERNAL DISCIPLINE COMPLAINTS

A. INTERNAL DISCIPLINE COMPLAINTS

320. During the course of our interviews, we heard a great deal about s. 64(5) of the *Act*, a section that must be read carefully to be understood. As it provides for the circumstances in which a public trust default would be processed under Division 6 rather than Division 4 of Part IX, it is the apparent explanation for paragraph (b) of the definition of an internal discipline complaint in s. 46(1) of the *Act*, although the latter refers to a public trust "complaint" rather than a "discipline default." As noted, I have recommended that the definition of an internal discipline complaint be amended to delete both paragraphs (a) and (b).

321. From a review of the proceedings before the Special Committee of the Legislature,[144] and from the comments expressed by various stakeholders interviewed during our review, it is apparent that a tension exists between the position of the unions and that of senior management of the police departments on the issue of whether, and if so when, a public trust default should be processed as an internal complaint. Union representatives, both past and present, tend to the view that any complaint concerning the conduct of a municipal constable, which meets the definition of a public trust default, should be characterized as such and processed under Division 4, irrespective of whether the complaint originates from a member of the public or any member of the public is affected by the conduct in question. Senior management, on the other hand, understandably wants the ability to deal internally with matters of discipline which do not involve or affect any member of the public, in accordance with the practices and procedures provided for under their respective collective bargaining agreements, notwithstanding that the conduct in question may fall within the current definition of a public trust default.

322. In his White Paper, the police complaint commissioner has addressed this debate by suggesting there should be a presumption that complaints regarding conduct "meeting the definition of public trust" be subject to processing under Division 4 of the *Act* unless the police complaint commissioner orders otherwise. Under this proposal, the decision to process a public trust complaint under Division 6

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[144] See: Vancouver Police Union, B.C. Federation of Police Officers and Vancouver Police Officers' Association, supra note 88, pp. 14-26; Contra: British Columbia, Legislative Assembly. Hansard. (January 21, 2002). "Special Committee to Review the Police Complaint Process," pp. 149-50 per Dr. John Hogarth.

would depend upon the discipline authority discharging the onus of persuading the police complaint commissioner that the public trust process was not appropriate in any particular circumstances.[145]

323. The police complaint commissioner's proposal is a response to strong submissions made by those representing what I have characterized as the union position on this issue. Equally strong submissions have been made by police management whose viewpoint is that the maintenance of good discipline and efficient police services requires that chief constables have the ability, through an internal discipline process based upon "normal labour law principles", to deal with conduct matters in which the public is not involved.[146] The debate between these two points of view has tended to focus, at least from the union perspective, on ambiguities surrounding the definitions of both an internal discipline complaint and a public trust default found in s. 46(1). As noted, I recommend that these definitions be amended. However, in addition to problems stemming from the actual definitions in s. 46(1), there is the underlying policy decision, reflected in paragraph (b) of the current definition of an internal discipline complaint, that in certain circumstances what is properly defined as a pubic trust complaint may be processed under Division 6. Those who hold the union viewpoint see this as undermining the integrity of the "three stream model" reflected by Divisions 4, 5 and 6 of the present *Act*.[147]

324. I am not persuaded that the provisions of s. 64(5), under which a public trust default may be processed as an internal complaint, undermine anything more than an overly rigid and simplistic theoretical model of the three types of complaints described in Part IX and the different "streams" under which they are processed. Subject to the implementation of the recommendations regarding the manner in which written and oral complaints should be handled, as well as the recommendations implementing the police complaint commissioner's power of contemporaneous oversight of both lodged and non-lodged complaints, there is nothing earth shattering about the notion of a public trust default being processed under Division 6 if, in fact, a complaint about the conduct in question is never formally lodged (s. 64(5)(b)(ii)). Neither is there anything untoward about a public trust complaint, which has been properly withdrawn by the complainant, being processed under Division 6 (s. 64(5)(b)(iii)). In both these circumstances, the member of the public who was directly affected by the conduct complained of, for whatever reasons, no longer has any interest in pursuing the matter. In essence, there is no longer a public trust "complaint", although there may still be an outstanding allegation of a public trust default which the discipline authority may feel merits investigation.

325. Assuming that the recommended increased oversight powers of the police complaint commissioner are implemented, and the police complaint commissioner has no reason either to order an investigation or, if an investigation has already been completed, to order a public review or a public hearing, in either case there may still be a legitimate basis upon which management will want to review the conduct of the officer(s) in question. I can see no reason why management should be deprived of the ability to do so, nor any reasons why the consent of the police complaint commissioner should be a prerequisite to such an internal review. Thus, I would not recommend that s. 65(4) either be eliminated or, as the police complaint commissioner suggests in his draft Police Complaint Act,[148] reduced to describing a discretion vested in his office to be exercised upon application of the discipline authority.

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[145] Supra note 9, p. 9.

[146] BCAMCP, supra note 8, pp. 6-7.

[147] British Columbia, Legislative Assembly. Hansard. (December 17, 2001) "Special Committee to Review the Police Complaint Process," pp. 108-109, per Insp. John de Haas.

[148] Supra note 10. See: s 44(8).

326. That said, it is apparent that the present s. 64(5) suffers from some inherent ambiguity. As well, if my recommendations with respect to the definition of "internal discipline complaint" and "public trust default" are implemented, certain consequential amendments to s. 64(5) will be necessary. To begin with, it should be clear that s. 64(5) is intended to deal with the unusual circumstance in which a public trust complaint has essentially been abandoned and can thus be dealt with as an internal discipline complaint. Accordingly, what is referred to as a "disciplinary default" in the third line of the opening phrases of s. 64(5) should properly be amended to read "public trust default." In addition, s. 64(5)(b)(i) should be deleted as irrelevant. If the *Act* or omission would not, if proved, constitute a public trust default, it must be either an internal disciplinary matter or conduct which does not fall under the auspices of Part IX of the *Act*. In either event, it is unnecessary to make reference to it in s. 64(5).

327. In the course of interviews it was suggested that if there is to be a presumptive characterization of all complaints as public trust complaints, subject to recharacterization on application by a discipline authority or by the police complaint commissioner on his own motion, s. 65(7) would become unnecessary. In order for this subsection to have any meaning, in the event that my recommendation with respect to presumptive characterization is accepted, it could only have application in circumstances where, after being persuaded by the discipline authority to recharacterize a complaint as an internal discipline complaint, either new or previously undisclosed information emerges indicating that a member of the public was directly or indirectly affected by the conduct in question. In such circumstances, the police complaint commissioner already has the authority, under s. 55(3), to order an investigation following which, under s. 60(4), he also has the authority, if necessary, to order a public hearing. Thus, I agree with the suggestion that s. 65(7) is redundant and would recommend that it be eliminated.

IX. DIVISION 7 - GENERAL

A. CRIMINAL PROSECUTION AND CIVIL REMEDIES NOT PROHIBITED

328. In s. 46(3) of his draft Police Complaint Act, the police complaint commissioner suggests that s. 65(3) of the *Act* be amended to clarify that a conviction of a respondent for an offence arising out of the same facts and circumstances giving rise to a complaint does not operate to prevent that complaint from being processed under Part IX. While we heard of no instance in which a problem has arisen because of this apparent oversight in the *Act*, it is best to head off such problems before they arise. I recommend that s. 65(3) be amended accordingly.

329. Section 65(4) presently authorizes the suspension of proceedings under Part IX of the *Act* until the conclusion of criminal proceedings brought against a respondent or complainant. The police complaint commissioner has also suggested, in s. 46(4) of his draft Police Complaint Act, that s. 65(4) be amended to expand the power to suspend proceedings under Part IX of the *Act* "for any reason related to the ... potential commencement" of criminal proceedings in which a respondent officer may be involved as an accused or a witness. Currently, s. 65(4) authorizes the suspension of proceedings under Part IX only in circumstances where criminal proceedings have actually been commenced. As became evident during the investigative audit, and was made clear during our interviews, the police complaint commissioner has interpreted the words "criminal proceedings" in s. 65(4) to include the circumstance whenever an investigative file has been forwarded to Crown counsel for consideration or approval of charges.

330. This is a difficult subject. Some of the discipline authorities we interviewed were of the view that suspensions are ordered too often and seem almost automatic in any case where there is a suggestion of criminal proceedings against either the respondent or the complainant. Any time the investigation into a public trust complaint is suspended pending the outcome of criminal proceedings which can take years to unfold, a process that some feel already takes far too long will necessarily take very much longer to conclude.

331. On the other hand, there will obviously be cases in which prejudice will result to either the respondent or the complainant if the Part IX complaint process is not stayed pending the conclusion of criminal proceedings. As well, there could be circumstances in which prejudice would result to an ongoing criminal investigation if a simultaneous complaint investigation were to be conducted. In such circumstances the police complaint commissioner must obviously have the authority to order a stay.

332. In the joint submission of the Vancouver Police Union, the British Columbia Federation of Police Officers and the Vancouver Police Officers' Association to the Special Committee of the Legislature on December 17, 2001, it was recommended that s. 65(4) be amended to clarify that a suspension shall not occur unless an information has been laid against the respondent or complainant charging either one with a criminal offence in relation to the matter that led to the *Police Act* complaint. The argument offered in support of this recommendation, as might be expected, was that long and protracted *Police Act* processes are prejudicial for both the respondent and the complainant. The joint submission also recommended that both the respondent and the complainant be notified in the event that the police complaint commissioner decides that a suspension is necessary and that each be given an opportunity to make submissions in writing regarding their concerns and to request the police complaint commissioner instead to order the investigation to continue.[149] This last recommendation parallels the content of an undated Guideline on Suspension of Proceedings issued by the officer of the Police Complaint Commission.[150]

333. In my view, the key to exercising the discretion to stay proceedings under Part IX lies in a careful assessment of what, if any, prejudice could result either to an ongoing criminal investigation or to either party if the complaint process proceeds in the face of criminal proceedings that have actually been commenced. Accordingly, I recommend that s. 65(4) be amended to provide that the authority to suspend proceedings under Part IX rests with the police complaint commissioner who has the discretion to order such a suspension when satisfied that prejudice would result either to an ongoing criminal investigation or to either party if the complaint proceedings under Part IX were to continue in the face of an outstanding criminal charge against either arising from the same circumstances giving rise to the complaint. I agree with the police complaint commissioner's suggestion in s. 46 of his draft Police Complaint Act, and recommend, that both the respondent and the complainant be notified when he intends to order a suspension of the Part IX process. I also recommend, as suggested by the joint submission of the unions, that both parties at the same time be given an opportunity to provide the police complaint commissioner with written submissions as to why they feel such a suspension ought, or ought not, to be ordered. In order to implement this recommendation, the notice issued by the police complaint commissioner should give the parties 14 days in which to provide such submissions.

B. COMPLAINTS MADE IN CONFIDENCE

334. Section 65.1(6) was the subject of concerns expressed by those who feel strongly that public trust complaints should, at all times, be processed under Division 4 of Part IX. In s. 48(6) of his draft Police Complaint Act, the police complaint commissioner has suggested that a public trust complaint, made in confidence, must be processed under Division 4 unless he orders otherwise.

335. The rationale for the requirement that a confidential complaint not be processed under Divisions 4 or 5, of course, is the preservation of the confidentiality of the complainant. There may well be circumstances in which such confidentiality can only be achieved if the complaint is processed internally. However, in those cases where a public trust complaint can be investigated and processed without revealing the identity of the complainant, or that identity has already been revealed, it obviously should be processed under Division 4 of Part IX.

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[149] Supra note 82, pp. 54-55.

[150] Supra note 17.

336. Thus, there clearly needs to be a discretion vested in the police complaint commissioner to decide under which division of Part IX a confidential complaint should be processed. It seems to me that the chances of preserving the confidentiality of the complainant are greater if the complaint is processed under Division 6. Thus, I would recommend that s. 65.1(6) be amended to provide that unless the police complaint commissioner orders otherwise, the allegations constituting a report made in confidence must not be processed under Division 4 or 5.

C. HARASSMENT PROHIBITED

337. In its submissions before the Special Committee of the Legislature, the BCCLA recommended that the declaration against harassment, in s. 65.2 of the *Act* be supported by making harassment a separate disciplinary default in the *Code of Professional Conduct*.[151] In s. 49(2) of his draft Police Complaint Act, the police complaint commissioner proposes an offence, punishable by a fine of up to $50,000, for anyone found guilty of breaching the express prohibition in s. 65.2.

338. It must be noted that while the interviews and the investigative audit revealed instances in which a complainant was either discouraged from making, or persuaded to withdraw, a complaint, the review did not produce any evidence of a complainant being harassed, intimidated or retaliated against for making a complaint. That said, s. 10 of the *Code of Professional Conduct Regulation*[152] makes it an "Abuse of Authority" to harass, intimidate or retaliate against anyone who, *inter alia*, submits a complaint under Part IX. I am satisfied that the range of disciplinary measures under s. 19 of the *Code* are sufficient to deal with any such incident, should it ever occur.

D. SERVICE RECORD OF DISCIPLINE

339. I have previously recommended that s. 65.3(1) be amended to reflect that the service record of discipline not contain reference to any complaint that was informally resolved, without any subsequent corrective or disciplinary measure being imposed, or to any complaint that was finally concluded as either summarily dismissed or unsubstantiated and that s. 65.3 be further amended by adding a subsection that provides for disclosure of a municipal police officer's service record of discipline upon request of a chief constable of any police service to which that officer has made an application for employment.

340. During the interviews we conducted we heard many suggestions regarding expungement of discipline records. The Special Committee of the Legislature also heard many submissions urging the return of an expungement formula such as previously existed in the *Police Act* prior to the 1997 amendments. In particular, the joint submission of the Vancouver Police Union, the BC Federation of Police Officers and the Vancouver Police Officers' Association, presented a persuasive argument to the effect that police officers are less likely to acknowledge or admit making a mistake and accepting minor discipline if they know the record of such a default will have a negative impact on the balance of their career.[153]

341. The Delta Police Department, in a submission prepared specifically for this review, suggests that expungement should not be automatic but rather involve a legitimate review process which would

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[151] Supra note 77, p. 6.

[152] Supra note 27.

[153] Supra note 82, p. 127.

be provoked by an application to expunge that could only be made after a pre-determined clearing period.[154]

342. The BCAMCP, in its January 2002 submission to the Special Committee of the Legislature, suggested a scheduled automatic expungement of discipline records based on the severity of the discipline default.[155]

343. I am persuaded by these submissions that there should be a process by which a municipal police officer's record of discipline for a disciplinary default can be expunged after a period of time (the "expungement clearing period") that is commensurate with the severity of the default in question. However, I am of the view that if any additional discipline default were to occur during an expungement clearing period, a new expungement clearing period should be started as of the date the corrective and/or disciplinary measures were imposed in connection with the subsequent discipline default.

344. With respect to whether expungement should be automatic, or subject to a successful application to the chief constable, after the expiration of the expungement clearing period, I favour the view that it should be automatic. With the proviso that a new expungement clearing period must be started, in the event of an intervening disciplinary default, and that such periods be of an appropriate length, I think there is no need to frustrate the expectation of obtaining a clean record, on the part of an officer who has successfully completed the expungement clearing period, by interposing a discretion in the chief constable to deny that relief. Accordingly, I recommend that s. 65.3 of the *Act* be amended by adding a subsection that provides for the automatic expungement of the record of a discipline default from a municipal police officer's service record of discipline, following the expiration of the expungement clearing period provided for. The expungement clearing period for any discipline default for which a disciplinary measure consisting of a written reprimand or less was imposed should be two years. The expungement clearing period for a discipline default for which a disciplinary measure greater than a written reprimand up to and including a direction to work under close supervision should be three years. The expungement clearing period for a discipline default for which a disciplinary measure greater than a direction to work under close supervision, but less than dismissal, was imposed should be five years. There should be no expungement of a record of dismissal. Additionally, I recommend that in the event a municipal police officer commits a further discipline default during an expungement period, that period shall commence to run again from the date upon which disciplinary and/or corrective measures were imposed.

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[154] Supra note 60, pp. 8-9.

[155] Supra note 71, pp. 4-5.

X. CODE OF PROFESSIONAL CONDUCT REGULATION

345. The interviews we conducted, together with the audit results, revealed that several amendments should be made to this regulation.

346. From several sources we heard that the heading "Deceit" for s. 7 was offensive given that paragraph (a) thereof is cast in wide enough terms to include an unintentional inaccuracy in an oral or written statement, or an entry in an official document or record. In light of s. 17, which provides that, unless otherwise specified, the mental element required for proof of all disciplinary defaults is that of an intentional or reckless act or omission, this should not pose a serious problem. However, it appears that, from the way it is currently drafted, s. 7(a) has the capacity to confuse the general intent to make an oral or written statement, or an entry in an official document or record, with the specific intent to mislead by including therein false or inaccurate information. Accordingly, I recommend that s. 7 of the *Regulation* be amended by adding the word "intentionally" immediately after the word "officer" in paragraph (a). In the case of an officer who unintentionally makes an inaccurate statement or entry, which then becomes the object of a complaint under Part IX, the appropriate discipline default to be alleged against the respondent would be that described in s. 6 of the *Regulation*, namely, Neglect of Duty by, without lawful excuse, failing to diligently perform his or her duties as a police officer.

347. A frequent comment by discipline authorities and professional standards officers we interviewed was that the gap from suspension without pay for not more than five scheduled working days to reduction in rank or dismissal was too great and does not provide sufficient flexibility to impose appropriate disciplinary measures in some cases. An example offered was the recent case involving several Vancouver police constables who were given consecutive five day suspensions without pay in respect of several substantiated discipline defaults, notwithstanding that no apparent authority exists in s. 19 to impose consecutive disciplinary or corrective measures.

348. In my view, the authority to impose both multiple and consecutive disciplinary or corrective measures is implicit in s. 19. Thus, for example, an officer who is found to have committed more than one discipline default can quite properly receive a suspension without pay on each, the cumulative total of which could properly exceed five scheduled working days. Similarly, an officer who is found to have committed only one discipline default, which evidences a need for both corrective and disciplinary measures, could, for example, be required to undergo counselling or training in addition to any disciplinary measure imposed. That said, I accept the unanimous view point expressed by those who spoke to us on the matter, that s. 19(1)(d) should be amended to provide for suspension without pay for up to, but not more than, 30 scheduled working days, and I so recommend.

349. As noted, the audit revealed a significant number of instances in which a substantiated complaint resulted in a recorded disposition of "managerial advice" or "advice as to future conduct." While this disposition is not provided for in the *Regulation*, no adverse comment by the office of the police complaint commissioner was noted. The explanation for this form of what was seen to be a corrective rather than a disciplinary disposition, was that in many circumstances a verbal reprimand, which has little if any corrective quality, was considered too harsh a disposition.

350. Sections 19(2) and (3) emphasize a corrective rather than a disciplinary approach in the ultimate disposition of a substantiated complaint, subject only to the need to maintain both the integrity of police discipline within the police department itself and public confidence in the complaint process. Thus, it seems to me that the low end of the so-called discipline or corrective scale should provide for a corrective measure that is a suitable disposition for the least serious discipline defaults. The scale, as set forth in s. 19(1) does not currently provide for such a measure. Accordingly, I recommend that s. 19(1) of the *Regulation* be amended to add, as paragraph (j), the corrective measure of "advice as to future conduct", a descriptive definition which, in my view, is preferable to "managerial advice" which has little, if any, meaning.

XI. CONCLUSION

351. When Chief Constable Battershill, of the Victoria City Police Department, appeared before the Special Committee of the Legislature, on May 8, 2002, he said, in part:

> It is going to take some time for civilian oversight to develop in this province. Police are starting to accept a model with civilian oversight and I think we have come a long way in the past three years.[158]

352. The results of this review demonstrate that there is still some distance to go before one-quarter of the population in British Columbia can be fully confident that all complaints against their municipal police officers will be thoroughly investigated and processed to a proper conclusion. But the results also demonstrate that the complaint process and oversight model that was adopted in this province, when Part IX was implemented in 1998, has the potential to produce that level of confidence. What is needed to achieve it, is the complete acceptance of the concept of civilian oversight by municipal police officers of all ranks, and greater more effective powers of oversight vested in the office of the police complaint commissioner. With one caveat, it is my belief that the additional oversight powers which I have recommended, if fully implemented and exercised, will be sufficient to ensure that all complaints against municipal police officers are fully and properly processed. The caveat is that, without full acceptance by the police of the legitimacy of the concept itself, no amount of civilian oversight will suffice to produce the desired result. If, as Chief Constable Battershill stated in 2002, the police were then starting to accept civilian oversight, it must now be said some four years later that there is no justification for any further delay in that acceptance.

353. Acceptance of civilian oversight by the police is not something that can be legislated. But what can be legislated is an entirely different model for processing complaints against the police, one that removes that process in its entirety from their control, placing the responsibility for investigation in the hands of a completely independent investigative force and the responsibility for adjudicating the results of those investigations, and imposing discipline, in the hands of an independent civilian agency. While there is a strong argument to be made, that the processing of complaints against the police is an essential element of the entire discipline structure which is so essential to the day-to-day operation of an effective police service, and that as such the complaint process should therefore remain the responsibility of police management, that argument can prevail only so long as there exists a demonstrated willingness on the part of such management, and all who serve below, to fully accept the authority of civilian oversight. With that in mind and, if the recommendations contained in this report are implemented, I recommend

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[158] British Columbia, Legislative Assembly. Hansard. (May 8, 2002) "Special Committee to Review the Police Complaint Process." p. 416.

that a further audit of a random sample of closed complaint files, similar to that which was conducted as part of this review, be undertaken three years following the date of such implementation, with a view to determining whether the Part IX complaint process and civilian oversight model should be retained in this province.

APPENDIX A

REPORT ON THE REVIEW OF THE POLICE COMPLAINT PROCESS IN BRITISH COLUMBIA: RECOMMENDATIONS

Josiah Wood, Q.C.

February 2007

RECOMMENDATIONS

1. Section 50(2)(e) be amended to include the duty to develop outreach programs with particular emphasis on those that address the needs of diverse communities including marginalized groups in our society.

2. Section 50(2) be amended by transferring thereto the substance of s. 50(3)(d).

3. Section 50(2) be amended by adding thereto a duty to conduct reviews with respect to the frequency and demographics of complaints so as to identify the development or existence of trends of alleged misconduct and to make whatever recommendations or take whatever actions as may seem necessary in the circumstances.

4. Section 50(2) be amended by adding thereto the duty to oversee and, in consultation with the discipline authority, to advise and if necessary to direct the course of, an ongoing investigation into a public trust complaint.

5. Section 50(2) be amended to provide that:
   a) The police complaint commissioner, in consultation with the relevant stakeholders affected, have the power to issue guidelines with respect to matters not covered by the provision of the *Act*, but nonetheless necessary to ensure that the objectives of Part IX are achieved. Such guidelines must not be inconsistent with any provision of the *Act*.
   b) The presently existing Guidelines and Practice Directions, to the extent they are not inconsistent with any recommendation implemented, are ratified and binding until such time as they are either withdrawn by the police complaint commissioner or amended after consultation with relevant stakeholders.
   c) That such guidelines as are made pursuant to that section as amended, or as may be ratified by an amendment to that section, be binding upon all participants in the Part IX complaint process, subject to the discretion of the police complaint commissioner to waive them in any circumstance where their application would be unreasonable in all the circumstances.

6. Section 51 be amended to provide that the police complaint commissioner may delegate any duty or power he may exercise under the *Act* to any member of his staff, except for the power to order:
   - That a complainant not be allowed to file any further complaint without first obtaining the permission of the police complaint commissioner;
   - That the investigation into a third party complaint be discontinued and the complaint summarily dismissed;

- An investigation;
- An external investigation;
- That further or better investigative steps be taken;
- A public review; or
- A public hearing.

7. Part IX be amended to provide that:
   a) the police complaint commissioner, his staff, employees, agents or any person acting under his direction shall not be compelled either to testify or to produce, in any proceeding other than a criminal proceeding, any record or information obtained in the course of discharging their duties under Part IX of the *Act*;
   b) immunity be provided to the police complaint commissioner, his staff, employees, agents or any person acting under his direction with respect to the performance, or intended performance, of any duty or the exercise of any power under the *Act*.

8. Section 52(4) be amended to provide that:
   a) In any case where a written complaint is received in other than the prescribed form, it shall be attached to a Form 1 and processed in the ordinary way under Part IX; and
   b) The person receiving such a written complaint be required to complete the substantive portion of the Form 1, either by drawing the relevant information from the written document provided by the complainant, or by contacting the complainant to obtain the necessary information.

9. Section 52 be amended to provide that:
   a) A formal record be kept, in a new Form 1A to be added to the *Police Act Forms Regulation*, of all oral complaints received which, for whatever reason, are not subsequently reduced to writing;
   b) The person receiving the oral complaint be required to record the name and contact particulars of the complainant, the name and PIN number(s) of the respondent(s) if known, details of the complaint, including the date and location of the alleged conduct complained of, the steps taken to assist the complainant in committing the complaint to writing, including the reasons why the complainant refused to accept such assistance and the final disposition of the complaint; and
   c) A copy of the Form 1A be provided to the police complaint commissioner forthwith upon final disposition of the oral complaint and that a copy be maintained in the department's complaint records together with the content, if any, of the file associated with the processing of the complaint.

10. Section 52 be further amended to provide the police complaint commissioner with the power both to undertake whatever review is deemed necessary to ensure that an oral complaint has been properly disposed of and, again where it is deemed necessary, to order an investigation of such a complaint.

11. Section 52(2) be amended to add thereto as paragraph (d) any provincial, federal or local person, official or agency designated by the police complaint commissioner as eligible to receive complaints under Part IX, providing such person so designated, or the person(s) employed by an agency so designated, are trained to enable them to comply with the mandatory requirements of ss. 52(3)(a) through (c) and (5).

12. The s. 46(1) definition of a "public trust default" be amended to clarify that it is conduct which directly involves or affects a member of the public and which, if proved, would constitute a discipline default

that results in one or more of the consequences described in paragraphs (a) through (c) of the present definition.

13. The s. 46(1) definition of an "internal discipline complaint" be amended by striking out paragraphs (a) and (b) of the present definition and providing that it involves conduct that relates to the acts, omissions or deportment of a respondent which do not directly involve or affect any member of the public.
14. Section 52.1be amended to provide that all lodged complaints be presumptively characterized as public trust complaints unless the police complaint commissioner, either on his own motion, or upon application by the discipline authority made forthwith upon receipt of a complaint is satisfied that it should be characterized as an internal or a service and policy complaint, and that all consequential amendments to s. 52.1 be made to give effect to this amendment.
15. Section 52.2 be amended by adding an express provision to the effect that notwithstanding that a notice of withdrawal has been filed, the discipline authority may continue to process the complaint.
16. Subsections (6) and (7) of s. 52.2 be collapsed into one subsection providing that where the police complaint commissioner determines the notice of withdrawal was not made under duress, he may nonetheless provide directions to the discipline authority with respect to the complaint or order the discipline authority to conduct an investigation into the complaint.
17. Division 3 of Part IX be amended by adding a section which gives the police complaint commissioner the power, upon consultation with the discipline authority, to dismiss any complaint that for whatever reason is not subject to the Part IX complaint process.
18. Division 4 be amended to eliminate the existing limitations on the right of third party complainants to the same participation in the Part IX complaint process as first party complainants.
19. Division 4 be amended to provide that:
    a) the police complaint commissioner have a discretionary power, either upon application by the discipline authority concerned or on his own motion, to order that the investigation into a third party complaint be discontinued, and the complaint summarily dismissed, upon evidence which establishes on a balance of probabilities that such complaint has been advanced for reasons other than a genuine belief on the part of the third party complainant that the conduct complained of amounted to a breach of the *Code of Professional Conduct*; and
    b) The police complaint commissioner have the power to summarily dismiss a third party complaint in the event either that more than one such complaint is lodged in connection with the same alleged public trust default or that the member of the public directly affected by the alleged public trust default lodges a complaint under s. 52 of the *Act*.
20. A section be added to Part IX to provide that:
    a) Where a respondent resigns, retires or transfers to another police department, while facing an outstanding public trust complaint, the discipline authority shall continue to process the complaint as though the respondent were still a member of the department and, in the event the complaint is substantiated following a discipline hearing, a public review or a public hearing at which the respondent is afforded full opportunity to participate, the discipline authority or adjudicator, as the case may be, shall record that result in the respondent's service record

of discipline together with the corrective and/or disciplinary measure that would have been imposed had the respondent still been an employee of that police department;

b) A disciplinary authority may draw an adverse inference against a respondent who resigns, retires or transfers to another police department, while facing an outstanding public trust complaint, and who elects not to participate in a discipline proceeding arising out of such a complaint;

c) A respondent who resigns, retires or transfers to another police department, while facing an outstanding public trust complaint, and who elects not to participate in a discipline proceeding with respect to that complaint, shall not be entitled to request either a public review or a public hearing in the event the complaint is found to be substantiated; and

d) Where a public trust complaint is lodged against a respondent who, since the events giving rise to the complaint but before the complaint was lodged, whether by reason of a resignation, retirement or transfer, is then employed by a different municipal police department, that complaint must be processed under Division 4 of Part IX by the municipal police department of which the respondent is then a member.

21. Section 54(1)(b) be amended to reflect that a public trust complaint can be summarily dismissed when there exists either a legal or a factual reason why it cannot possibly be substantiated such that any, or any further, investigation of the complaint is unwarranted.

22. Section 54(3) be amended to require that the discipline authority must forthwith notify the parties and the police complaint commissioner of a decision to summarily dismiss a complaint, the reasons for the decision and the recourse that is available to the complainant.

23. A section be added to Division 4 giving the police complaint commissioner the power, upon application by a discipline authority, to make an order that no further complaints from an individual complainant be lodged for processing under Division 4 of the *Act* without leave of the police complaint commissioner. Such an order can only be made after giving the individual complainant an opportunity to be heard, and must be based upon proof that such individual has previously made at least two complaints that have been summarily dismissed as frivolous or vexatious. Any individual against whom such an order has been made shall have the right to apply to the police complaint commissioner to have such an order vacated.

24. Section 54.1 be amended to provide that:

a) Where the discipline authority determines that informal resolution of a complaint would be appropriate, the discipline authority shall first try to obtain the consent of both the complainant and the respondent to engage in such a procedure;

b) If the consent of both parties is forthcoming, the discipline authority may engage either or both of the procedures described in s. 54.1(5);

c) S. 54.1(4) be repealed;

d) If the consent of either or both parties to attempt an informal resolution is not forthcoming, and the discipline authority is of the view that ordered mediation would be appropriate, the police complaint commissioner must be so advised;

e) If, after consultation with the discipline authority, the police complaint commissioner agrees that ordered mediation of the complaint is appropriate:

i) The police complaint commissioner shall order that any, or any further, investigation of the complaint be suspended pending the outcome of the mediation;

ii) The police complaint commissioner shall appoint a mediator;

iii) The discipline authority shall order the respondent to attend at and participate in the mediation at a time and place to be determined by the mediator;

iv) The police complaint commissioner shall order the complainant to attend at and participate in the mediation at a time and place to be determined by the mediator, and shall advise the complainant both that further investigation of the complaint is suspended pending the outcome of the mediation and that failure to attend the mediation may result in the complaint being dismissed. The notice should further provide that if the complainant has good reason not to attend the mediation, he or she can apply to the police complaint commissioner to be relieved of the requirement to attend; and

v) If the police complaint commissioner is satisfied that the complainant has a justifiable reason for not attending a mediation, the police complaint commissioner shall so advise the discipline authority, the suspension of the investigation shall be lifted and the complaint processed in the ordinary way under Division 4 of the *Act*;

f) If the ordered mediation does not result in resolution of the complaint, the police complaint commissioner shall lift the suspension of the investigation and the discipline authority shall promptly proceed to initiate, or continue with, as the case may be, an investigation into the complaint; and

g) If, notwithstanding the notice to the complainant, the complainant fails to attend the mediation, the police complaint commissioner in consultation with the discipline authority may order either that the complaint be dismissed, or that it be processed under Division 4.

25. Section 54.1 be further amended to provide that, in order to ensure that the guidelines for informal resolution are followed, the police complaint commissioner shall have the authority to make inquiries of the discipline authority with respect to any informal resolution, other than one that has resulted from a mediation, and where for any reason he considers that such resolution was inappropriate, to order that it be set aside and the complaint processed under Division 4. If that recommendation is implemented, ss. 54.2(2), (3) and (4) can be deleted.

26. Section 54.2(5) and (6) be amended to:

    (a) confirm that corrective or disciplinary measures may be imposed by the discipline authority following an informal resolution; and

    (b) that any complaint resolved by way of informal resolution, which does not result in corrective or disciplinary action, shall not be recorded in the respondent's service record of discipline, but shall be entered in the respondent's personnel file.

27. Section 65.3(1) be amended to provide that no complaint that is informally resolved without subsequent corrective or disciplinary action, and no complaint that is finally either summarily dismissed or found to be unsubstantiated shall be recorded in a respondent's service record of discipline, but shall be entered in a respondent's personnel file.

28. Section 65.3 be amended by adding thereto a further subsection providing that a current or former municipal police officer's service record of discipline shall be made available, upon request, to the chief constable of any police service to which that current or former municipal police officer has made an application for employment.

29. Part IX be amended to provide that every municipal constable, chief constable and deputy chief constable has a duty to cooperate fully with any investigation conducted under Part IX of the *Act*.

30. Part IX be further amended to provide that every municipal constable, chief constable and deputy chief constable has a duty to cooperate with the police complaint commissioner, and his properly delegated staff, in the exercise of the powers and duties of that office under Part IX of the *Act*.

31. Division 4 of Part IX be amended by adding a section containing an express duty on the part of respondent or witness officers to provide a statement, and to submit to an interview, within 5 days of being called upon to do so by an officer conducting an investigation into a public trust complaint, such deadline to be subject only to a discretion on the part of the discipline authority, in special circumstances, to grant an extension.

32. Division 4 of Part IX be further amended to provide that any statement so provided shall be admissible in any proceedings under the *Police Act*, but cannot, under any circumstance, excepting a prosecution for perjury, be admitted into evidence in any civil or criminal proceeding.

33. Section 5 of the *Code of Professional Conduct Regulation* be amended to provide an additional category of discreditable conduct in the form of a failure to cooperate with any investigation or a failure to provide a statement or to submit to an interview when called upon to do so by an investigating officer.

34. Part IX of the *Act* be amended by adding thereto a section which provides that a justice of the peace, who is satisfied by information on oath that there are reasonable grounds to believe that there is in a building, receptacle or place anything that there are reasonable grounds to believe will afford evidence with respect to the commission of a disciplinary default under the *Code of Professional Conduct Regulation* may, at any time, issue a warrant authorizing a discipline authority or a municipal constable, chief constable or deputy chief constable conducting any investigation under Part IX to search the building, receptacle or place for any such thing and to seize it. Such a provision should be accompanied by the usual safeguards relating to the custody, preservation and ultimate disposal of such evidence following conclusion of the investigation in question.

35. Section 56.1 of the *Act* be amended to provide that the police complaint commissioner's oversight powers include both the power to monitor an investigation into a public trust complaint, as that investigation is being conducted, and the power, upon consultation with the investigating officer or the discipline authority, to provide advice and direction with respect to further investigative steps that he believes are necessary to ensure that a thorough and complete investigation is conducted.

36. Section 56.1 be further amended to provide the police complaint commissioner with the power to order an external investigation in any case where, after and notwithstanding consultation with the investigating officer and/or the discipline authority, he believes that a thorough and complete investigation will not be conducted. Concurrent with this power must be the power to order that the full investigative file accumulated to the point where the order for an external investigation is made be delivered forthwith to the external agency which is to assume conduct of the investigation.

37. Section 56.1 be further amended to include the power of the police complaint commissioner to contemporaneously monitor the non-lodged oral complaint records of each municipal department.

38. Part IX of the *Act* be amended to require all municipal police departments to acquire either the IPDMA Professional Standards Module, or its equivalent, and to link that module to a fully secure integrated system that gives the police complaint commissioner electronic access to the complete complaint files of each such department. This amendment shall include a requirement that all municipal police departments utilize the IPDMA Professional Standards Module, or its equivalent, to store the entire contents of all lodged and

non-lodged complaint files. This amendment shall include a specific deadline for implementation, such deadline to be set after consultation with the departments and the technological personnel charged with the responsibility of designing and installing the system and training the professional standards officers who must use it.

39. Division 4 be further amended to give the police complaint commissioner the power to order an external investigation irrespective of whether a public trust complaint has been lodged.

40. Division 4 be further amended to provide that, where either a discipline authority or the police complaint commissioner orders an external investigation, the scope of available external agencies is not limited to existing municipal police departments or the provincial police force, as both are currently defined in the *Act*.

41. Division 4 be further amended to provide that the police complaint commissioner must be given notice of any in-custody or police-related death.

42. Division 4 be further amended to provide that all in-custody and police related deaths, irrespective of whether a public trust complaint is lodged with respect thereto, must be investigated by an external police agency, whose investigation shall be subject to the same contemporaneous oversight powers given to the police complaint commissioner in the case of investigations into public trust complaints.

43. Section 56.1 of the *Act* be amended to provide that an appointed observer will have the power, upon consultation with the investigator or the discipline authority as the case may be, to advise and, if necessary, through the police complaint commissioner to direct that certain investigative steps be taken.

44. Subsections 56.2(4) through (8) be amended to provide that a respondent who is suspended pursuant to s. 56.2(1) is entitled to receive full pay and allowances during the period of such suspension unless the local police board, after notice to the respondent, and after a hearing at which the respondent is entitled to appear, to be represented by counsel or an agent and to be heard, decides there are strong reasons in the public interest why his or her full pay and allowances should be discontinued.

45. Sections 57 and 57.1 be combined into a single section which provides that:
    a) Upon receipt of the final investigation report, the discipline authority must decide, on the basis of the evidence contained in that report, whether the discipline default alleged in the public trust complaint has been established on a balance of probabilities. If the discipline authority decides that the public trust complaint is substantiated, he or she must then decide the appropriate corrective or disciplinary measure to be imposed upon the respondent.
    b) Within 10 business days of the receipt of the final investigation report, the discipline authority must provide the respondent, the complainant and the police complaint commissioner with a copy of the final investigation report together with notice of his or her decision whether the public trust complaint is substantiated and, if so, what proposed corrective and/or disciplinary measures are warranted in the circumstances. The notice accompanying the final investigation report should also contain the matters listed in s. 57.1(2) of the *Act*.
    c) The final investigation report must be served on both the respondent and the complainant, subject to editing to remove any sensitive law enforcement information or any information which is subject to exemption under the *Freedom of Information and Protection of Privacy Act*.
    d) The final investigation report provided to the police complaint commissioner shall not be edited and, in addition to the final investigation report, the discipline authority shall provide to the

police complaint commissioner any and all information not included in the investigation file related to the complaint, that may possibly be relevant to the circumstances giving rise to the complaint, including, without limitation, those matters currently listed in s. 57(2)(a) through (f) inclusive.

e) If the final investigation report provided to the respondent and complainant is edited, either or both may apply to the police complaint commissioner to be given access to the edited portions, and the police complaint commissioner may disclose such portions on the grounds presently set out in s. 57(5).

f) Section 57.1(3) be deleted.

g) If the police complaint commissioner believes, on reasonable grounds, that the decision of a discipline authority under s. 57.1(1)(b) is wrong, he may order that a discipline proceeding be convened in respect of the complaint before the chief or deputy chief constable of another municipal department.

h) Any decision by the police complaint commissioner, on his own motion, to require that a discipline proceeding be convened in connection with a complaint, which a discipline authority has found to be unsubstantiated under s. 57.1(1)(b), must be made within 30 days of the police complaint commissioner's receipt of the final investigation report and notice of the discipline authority.

i) If the discipline authority does not order a discipline proceeding, following receipt of the final investigation report and notice of the discipline authority under s. 57.1(1)(b), and the police complaint commissioner does not arrange a public hearing, the decision of the discipline authority to dismiss the complaint as unsubstantiated is final and conclusive.

46. Section 56(6) be amended to provide that the final investigation report contemplated by that section contain a complete summary of all relevant evidence in the investigative file, together with copies of any relevant documents or records and the investigator's findings, conclusions and recommendations.

47. Part IX be amended to provide that, upon the *ex parte* application of any police officer or police agency, the police complaint commissioner may order that sensitive police information not be disclosed to the complainant or any other person, or that it only be disclosed upon such terms and conditions as he directs.

48. Section 58.1 be amended to provide that a discipline authority who has presided over a prehearing conference that has not resulted in the resolution of all discipline defaults alleged against a respondent, shall not preside over the subsequent discipline proceeding mandated by s. 58.1(1)(a).

49. Section 58.1 be amended to provide that a discipline authority may, at any time and for any reason, request that a chief or deputy chief constable of another municipal department preside over a discipline proceeding mandated by s. 58.1(1)(a).

50. Section 58.1 be amended to provide that:

a) A discipline authority must refer a discipline proceeding to a chief or deputy chief constable of another municipal department if he or she considers that such a referral is necessary in order to preserve public confidence in the complaint process, or if the police complaint commissioner so orders; and

b) The police complaint commissioner may make an order that a discipline proceeding be presided over by the chief or deputy chief constable of another municipal department if he considers that such is necessary in the public interest.

51. Section 58.1(1)(b) be amended to provide that notice of the discipline proceeding to the complainant include notice of the complainant's right to make written or oral submissions to the discipline authority respecting the matters set out in s. 58.1(3), and the manner in which oral submissions can be made.

52. Section 58.1(3) be amended to provide that any oral submissions by a complainant be recorded and transcribed and that a copy of any written submissions, or the transcript of any oral submissions, shall form part of the record at the subsequent discipline proceeding.

53. Section 58.1 be amended by adding a requirement that a discipline proceeding must be convened within 60 days of the date upon which the discipline authority received the final investigation report.

54. Section 59 be amended to provide that:

    a) In the case of a discipline proceeding into an alleged public trust default, where the proposed disciplinary and/or corrective measures include either a reduction in rank or dismissal, the respondent shall be entitled to:

        i) Full disclosure of the complete final investigation report, any separate reports prepared respecting the investigation and any other relevant written records including any written submissions, or a transcript of any oral submissions, made by the complainant pursuant to s. 58.1(3) of the *Act*, all of which should be filed as exhibits in support of the alleged public trust default and proposed disciplinary and/or corrective measures;

        ii) Be represented by counsel or an agent;

        iii) In addition to cross-examining the investigating officer, to require the attendance for cross-examination, and to cross-examine, any witnesses, including the complainant, named in the final investigation report;

        iv) To present evidence on his or her own behalf; and

        v) To make full submissions following the conclusion of the evidentiary phase of the discipline proceeding, including with respect to those matters referenced in s. 59(3)(b) of the *Act*.

    b) In the case of a discipline proceeding conducted with respect to an alleged public trust default, where the proposed disciplinary and/or corrective measures include anything less than reduction in rank, the respondent shall be entitled to all of (i), (ii), (iv) and (v) set forth in (a), but the right of cross-examination shall be confined to cross-examining the investigating officer unless, in the opinion of the presiding discipline authority, the cross-examination of a witness named in the final investigation report is necessary in order to resolve conflicting evidence material to a proper disposition of the alleged public trust default.

    c) The discipline authority who presides over a discipline proceeding shall be entitled to the assistance of legal counsel both during and subsequent to the discipline proceeding, including with respect to the preparation of the formal disposition record.

    d) In addition to the electronic recording of the discipline proceeding provided for in s. 59(4) of the *Act*, a full record of the discipline proceeding, including all exhibits filed, shall be prepared.

e) The discipline authority presiding over a discipline proceeding may adjourn the proceeding and order that a further investigation into the conduct of the respondent be undertaken, if in his or her opinion such further investigation is warranted and necessary in the public interest.

55. Section 59 be further amended to provide that all discipline proceedings be held in camera.

56. Part IX be amended by adding a section to provide for a public review of a decision made pursuant to ss. 58(5), 59(5) and (6), as an alternative to a public hearing under s. 60.

57. Part IX be further amended to provide that the police complaint commissioner have the discretion, on receipt of an application for a public hearing made pursuant to ss. 58(6) and 59.1(3), or on his own motion, to order a public review rather than a public hearing.

58. Part IX be further amended to provide that the police complaint commissioner may order a public review if he considers either that there is a reasonable basis to believe the disposition of a public trust complaint by a discipline authority, including the imposition of corrective and/or disciplinary measures, if any, is wrong, or if he considers that there are grounds to believe such a review is necessary in the public interest.

59. Part IX be further amended to provide that the public review shall be presided over by an adjudicator appointed under s. 60.1(2) of the *Act*, and shall be confined to the record upon which the discipline authority made the decision(s) being reviewed, including any records, documents or information provided by the discipline authority to the police complaint commissioner under s. 57(2), subject only to the discretion of the adjudicator in exceptional circumstances to order that additional evidence be admitted.

60. Part IX be further amended to provide that the police complaint commissioner, or his counsel, and the respondent, either in person or through counsel or an agent, shall have standing to appear at a public review and make submissions based upon the record which is before the adjudicator.

61. Part IX be further amended to provide that the standard of review at a public review is that of correctness and that, at the conclusion of the review, the adjudicator shall:
    (a) confirm the decision(s) of the discipline authority, or
    (b) substitute his own decision(s) for any decision(s) of the discipline authority which he believes to be wrong.

62. Part IX be further amended to provide that in the case of a public review of a decision of a discipline authority under ss. 58(5), 59(5) and (6), the decision of the adjudicator shall be final and conclusive and not open to question or review by a Court on any ground.

63. Section 60(3)(a) be amended to provide that the police complaint commissioner must arrange either a public review or a public hearing if the request for a public hearing is made by a respondent with respect to whom a disciplinary measure of reduction in rank or dismissal has been proposed.

64. Section 60(3)(b) be deleted.

65. Part IX be further amended to require the police complaint commissioner to make a decision whether to order a public review or a public hearing within 60 days of receiving:
    a) A notice under s. 58(5)(a);

b) A notice under s. 59.1(1)(b) or further reasons from the discipline authority under s. 59.1(2)(a); or

c) A request for a public hearing under ss. 58(6) or 59.1(3).

66. Part IX be further amended to provide that the police complaint commissioner may at any time reopen a decision by him not to order a public review or a public hearing if new or additional information becomes available which, in his opinion, requires such decision to be reconsidered.

67. Part IX be further amended to require the police complaint commissioner to provide written reasons for refusing a request for a public review or public hearing.

68. Part IX be further amended to provide that the police complaint commissioner may at any time cancel an order for a public review or public hearing which he has made on his own motion.

69. Part IX be further amended to provide that the police complaint commissioner may, in his discretion, cancel a public review or public hearing ordered at the request of a respondent, if the respondent so requests, in which event the decision of the discipline authority from which the order for the public review or public hearing was made shall become final and conclusive and shall not be open to question or review by a Court on any ground.

70. Section 60.1(2) be amended to provide that if the police complaint commissioner orders a public review or public hearing he shall request the Associate Chief Justice of the British Columbia Supreme Court to appoint a retired judge of the Provincial Court, the British Columbia Supreme Court or the Court of Appeal to preside as adjudicator at the public review or public hearing.

71. Section 60.1 be amended to provide that, if an adjudicator appointed under ss. (2) is unable for any reason to continue or complete a public review or public hearing, the police complaint commissioner shall request the Associate Chief Justice of the British Columbia Supreme Court to appoint a new adjudicator who shall continue with the public review or the public hearing, as the case may be, after either reviewing a transcript of the previous proceedings or rehearing part or all of the previous proceedings.

72. Section 61(3) and (4) be amended to reflect that:

(a) both the police complaint commissioner, through counsel, and the respondent, either in person or through counsel or an agent, shall have the right to present their respective cases in full, including without limitation, the right to call and cross-examine witnesses, introduce evidence, and make full submissions at the conclusion of the evidence; and

(b) upon application by or on behalf of the complainant, the adjudicator may make such order as to the further participation of the complainant in the public hearing as in his or her opinion it is necessary to ascertain the truth.

73. Section 61 be amended to provide that an adjudicator who presides over a public hearing shall have full discretion to conduct such hearing in whatever manner he or she thinks is necessary to achieve a just result and to make whatever procedural or evidentiary rulings at such a hearing as are necessary to ensure that such a result is achieved.

74. Part IX be amended to provide that the cost of public hearings, including the cost of the police complaint commissioner's counsel retained for the purpose of such a hearing, shall not form part of the annual budget of the office of the police complaint commissioner but shall be provided for in a separate fund to be established by the Legislature.

75. Section 61.1(3) be amended to ensure that it does not include a respondent at either a discipline proceeding or a public hearing with respect to a public trust complaint.

76. Section 63 be amended to prohibit a police officer from making a service or policy complaint where the subject matter of the complaint is grievable under his or her collective agreement.

77. Section 63.1 be amended to provide that a complainant must request a review of a decision of a police board, under s. 63.1(6) within 30 days of receiving notice of the police board decision.

78. Section 63.1 be amended to provide that the police complaint commissioner must conclude a review of the decision of a police board under s. 63.1(5) within 60 days of receiving either notice of the decision under that section or a request for such review from the complainant under s. 63.1(6).

79. Section 64(5) be amended by replacing the words "disciplinary default" in the third line to "public trust default."

80. Section 64(5)(b)(i) be deleted.

81. Section 65(7) be deleted.

82. Section 65(3) be amended to provide that the conviction of a respondent for an offence arising out of the same facts and circumstances giving rise to a complaint does not operate to prevent that complaint from being processed under Part IX.

83. Section 65(4) be amended to provide that the authority to suspend proceedings under Part IX rests with the police complaint commissioner, who has the discretion to order a suspension of proceedings under the *Act* if he is satisfied that prejudice would result either to an ongoing criminal investigation or either party of a lodged complaint if the complaint proceedings under Part IX were to continue in the face of an outstanding criminal charge against either arising from the same circumstances giving rise to the complaint.

84. Section 65 be further amended to provide that both the complainant and the respondent be given written notice of the police complaint commissioner's intention to order a suspension of the Part IX complaint proceedings and that each be given 14 days in which to provide the police complaint commissioner with written submissions as to why they feel such a suspension ought, or ought not, to be ordered.

85. Section 65.1(6) be amended to provide that unless the police complaint commissioner orders otherwise, the allegations constituting a report made in confidence must not be processed under Division 4 or 5.

86. Section 65.3 be amended by adding a subsection that provides for the automatic expungement of the record of a discipline default from a municipal police officer's service record of discipline, following the expiration of the expungement clearing period provided for. The expungement clearing period for any discipline default for which a disciplinary measure consisting of a written reprimand or less is imposed is 2 years. The expungement clearing period for a discipline default for which a disciplinary measure greater than a written reprimand up to and including a direction to work under close supervision is imposed is 3 years. The expungement clearing period for a discipline default for which a disciplinary measure greater than a direction to work under close supervision, but less than dismissal, is imposed is 5 years.

87. Section 65.3 be further amended to provide that in the event a municipal constable commits a further discipline default during an expungement clearing period, a new expungement clearing period shall commence to run again from the date upon which the further disciplinary measure(s) are imposed.

88. Section 7 of the *Code of Professional Conduct Regulation* be amended by adding the word "intentionally" immediately after the word "officer" in paragraph (a).

89. Section 19(1)(d) of the *Code of Professional Conduct Regulation* be amended by changing the number of days of suspension without pay from "5" to "30".

90. Section 19(1) of the *Code of professional Conduct Regulation* be amended by adding thereto as paragraph (j), the corrective measure of "advice as to future conduct."

91. A further administrative and investigative audit of randomly selected closed complaint files be conducted 3 years after the implementation of these recommendations.

APPENDIX B

REPORT ON THE ADMINISTRATIVE AUDIT CONDUCTED FOR THE REVIEW OF THE POLICE COMPLAINT PROCESS IN BRITISH COLUMBIA

SUBMITTED BY:

Police Services Division
September 2006

TABLE OF CONTENTS

EXECUTIVE SUMMARY 4

1 **INTRODUCTION AND METHODOLOGY** 6

2 **COMPLAINT DEMOGRAPHICS** 8
- 2.1 Distribution of Complaints by Department 8
- 2.2 Type of Complaint 8
- 2.3 Respondent Officers 9
- 2.4 Complainants 9
- 2.5 Complaint Disposition 10

3 **COMPLAINT CHARACTERIZATION AND PROCESSING** 11
- 3.1 Record of Complaint 11
- 3.2 Complaint Recipient 11
- 3.3 Subject of Complaint 12
- 3.4 Notice of Complaint to OPCC 12
- 3.5 Notice of Complaint to Respondent 13
- 3.6 Complaint Characterization 14
- 3.7 Confirmation of Characterization by OPCC 15
- 3.8 Final Characterization 15

4 **WITHDRAWALS** 16

5 **PUBLIC TRUST COMPLAINTS** 17
- 5.1 Summary Dismissal 17
- 5.2 Informal Resolution 18
- 5.3 Investigations 20
  - 5.3.1 External Investigations 20
  - 5.3.2 Rank of Investigating Officer 20
  - 5.3.3 Suspensions with Pay Pending the Completion of an Investigation 21
  - 5.3.4 Extensions 21
  - 5.3.5 Reports on the Progress of an Investigation 22
  - 5.3.6 Length of Time to "Completion" of Investigation 23
  - 5.3.7 Discipline Authority's Decision Regarding Disciplinary or Corrective Measures 24
- 5.4 Requests for Public Hearings 25
- 5.5 Overall Disposition of Investigated Complaints 26

6 **SERVICE OR POLICY COMPLAINTS** 27

7 **INTERNAL DISCIPLINE COMPLAINTS** 28

8 **OTHER OBSERVATIONS** 29
- 8.1 Civil Action 29
- 8.2 Criminal Conduct 29
- 8.3 Complaints Made in Confidence 29
- 8.4 Errors and Inconsistencies 29

9 **INFORMAL OR "NON-LODGED" COMPLAINTS** 30

10 **BEST PRACTICES** 33

11 **SUMMARY AND CONCLUSIONS** 34

EXECUTIVE SUMMARY

This report summarizes the findings of an administrative audit of 294 police complaint files involving the 11 independent municipal police departments in British Columbia. The audit was conducted as part of a broader review of the process for complaints against independent municipal police, which was ordered under the authority of s. 42 of the *Police Act* on June 14, 2005. The audited files were randomly selected from the total population of police complaints which were closed between June 15, 2003 and June 14, 2005—the two year period leading up to the announcement of the review. The administrative audit examined compliance with the administrative or technical aspects of the police complaint process, such as notification and reporting requirements, informal resolution and discipline procedures, and timelines. The administrative audit was conducted by staff in Police Services Division's Research and Evaluation Unit.

In addition to the administrative audit, a substantive audit of complaint investigations was conducted by Crown Prosecutor Peter Juk and Staff Sergeant Deborah J. Chisholm of the RCMP Anti-Corruption Unit. This audit examined such issues as the quality of the investigation and the appropriateness of conclusions in light of the evidence obtained. Findings from their review are summarized in the investigative audit report.

The results of the administrative audit indicated a number of areas where compliance with the police complaint process as outlined in Part 9 of the *Police Act* was not being fully realized. These included:

- *Progress reports.* Initial reports were missing or late in roughly two-thirds of the investigated complaints examined; follow up reports appeared to be missing in approximately half of these complaints. Further, the content of progress reports was often minimal.
- *Timeliness of investigations and extensions.* Forty per cent of the fully investigated complaints examined exceeded six months in length—the timeframe for the completion of investigations specified in Part 9. Extensions were requested in about half of these cases.
- *Length of time between the conclusion of an investigation and the Discipline Authority's Decision regarding disciplinary or corrective measures.* Part 9 specifies timelines within which the Discipline Authority must review and provide a summary of the final investigation report to complainants and respondents, including a decision regarding disciplinary or corrective measures. Compliance with this timeline was often obscured by a lack of clear dates marking the investigator's completion of the investigation report and the Discipline Authority's decisions which resulted from the report.

In addition to the identified procedural issues, the administrative audit revealed other concerns, including:

- An apparent degree of confusion in the use of summary dismissal versus concluding a complaint as unsubstantiated;
- Limited consideration and use of informal resolution. Informally resolved complaints accounted for about 8% of audited complaints;
- Limited use of formal disciplinary or corrective measures, which were applied in 3% of audited complaints. In contrast, managerial advice or advice to future conduct—an informal corrective measure—was noted in 6% of audited complaints;
- Failure, in some cases, to inform the OPCC of internal discipline complaints in a timely manner; and
- A considerable number of administrative errors.

1 INTRODUCTION AND METHODOLOGY

As part of the review of the police complaint process, the review team audited a random sample of closed complaint files involving the 11 independent municipal police departments. There were two parts to the audit: i) a review of compliance with the administrative or technical aspects of the police complaint process, as outlined in Part 9 of the *Police Act*, and ii) a review of the investigative steps and conclusions reached in each case. The former, referred to as the administrative audit, was conducted by staff in Police Services Division's Research and Evaluation Unit. The latter, referred to as the investigative audit, was conducted by Crown Prosecutor Peter Juk and Staff Sergeant Deborah J. Chisholm of the RCMP Anti-Corruption Unit.

This report details the methodology and findings of the administrative audit. Please refer to the investigative audit report for a discussion of the findings of that review.

To initiate the audit, each of the 11 independent municipal police departments and the OPCC were asked to provide a list of all complaint files closed between June 15, 2003 and June 14, 2005. This represented the two-year period leading up to the initial announcement of the review on June 14, 2005.

While the list provided by the OPCC was used to extract the random sample of files to include in the audit, departmental lists were reviewed to identify any files that did not appear in the OPCC records. The latter were briefly examined during site visits at each department to ensure that the OPCC was notified of all complaints as required by Part 9 of the *Police Act*. The results of this analysis are discussed in s. 3.4.

According to the file list provided by the OPCC, the total number of formal complaint files closed during the review period was 783. To ensure a margin of error within plus or minus 5% at the 95% confidence interval, the review team identified a target sample size of 300 files to include in the audit. To extract the sample, computer-generated random numbers were assigned to the OPCC file list, which was stored in a MS Excel spreadsheet. The list was then sorted by random number and the first 300 files were selected for inclusion in the audit. The sample was analyzed to ensure that the distribution of complaints by department and characterization was representative of the total population of complaints.

Six files were discarded from the analysis as a result of missing data.[1] The resulting sample size (294) was still large enough to yield a margin of error within plus or minus five percentage points at the 95% confidence level. This means that if other samples of this size were repeatedly extracted from the population, the results would be within plus or minus five percentage points of the figures reported in this report, 19 times out of 20.

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[1] For a variety of reasons, complete data for the investigative audit was not available for six files. To ensure consistency between the administrative and investigative audits, these six files were removed from the administrative audit analysis.

In advance of site visits, the review team provided each police department with the list of files from their department that had been selected for inclusion in the audit. These files were pulled and made available to the review team to examine during site visits. In addition, the review team obtained the corresponding files from the OPCC prior to each site visit. This allowed the review team to examine both the departmental file and the OPCC file for each complaint simultaneously.

The audit commenced the week of November 21, 2005 at the Abbotsford Police Department. During this first of eleven site visits, members of the review team were trained in the use of the file coding database. The database was developed using MS Access and was designed to input and store data relating to the administrative aspects of the complaints process. Five of the 13 files included in the sample from the Abbotsford Police Department were coded by all review team members and reviewed as a group to develop inter-rater reliability, and to identify ways to streamline the coding process. An additional three files were verified for inter-rater reliability before proceeding with individual file coding.

The review team conducted site visits at the remaining police departments between November 29, 2005 and January 10, 2006. The data was transferred into a statistical software analysis program (SPSS) for analysis.

2 COMPLAINT DEMOGRAPHICS

2.1 DISTRIBUTION OF COMPLAINTS BY DEPARTMENT

A total of 294 complaint files were reviewed and analyzed.[7] The breakdown of complaints by department was consistent with their distribution in the overall population of complaints during the review period. For example, complaints involving the Vancouver Police Department—the largest municipal police department in the province—made up about half of all complaints during the review period. Similarly they accounted for roughly half (49%) of complaints in the sample. The distribution of complaints by department is summarized in Table 1.

Table 1: Audited Complaints by Department

	Frequency	Percent
Vancouver	143	49
Victoria	73	25
Saanich	19	7
New Westminster	16	5
Abbotsford	13	4
Delta	9	3
West Vancouver	8	3
Central Saanich	4	1
Nelson	4	1
Port Moody	3	1
Oak Bay	2	1
Total	**294**	**100**

2.2 TYPE OF COMPLAINT

As discussed in greater detail in section 3.8, the majority of complaints in the sample were handled as matters of Public Trust alone (n=277 or 94%). Six complaints were characterized as Compound complaints, involving both Public Trust and Service or Policy aspects (2%). In addition, there were four Service or Policy complaints, four Internal Discipline complaints and three complaints determined to be outside the realm of Part 9 (each accounting for about 1% of all complaints).

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[7] Two of these files could not be located by the Department and were reviewed based on the OPCC file only.

In the majority of complaints (n=173 or 59%), only one allegation was specified. In total, the review team noted 553 allegations in the 294 files.[3] The most frequently cited allegation was abuse of authority, which accounted for 48% of all allegations. Table 2 summarizes the allegations by type.

Table 2: Types of Allegations

	Frequency	Percent
Abuse of Authority[4]	268	48
Discreditable Conduct[5]	121	22
Neglect of Duty	63	11
Allegation Not Specified	38	7
Conduct Constituting an Offence	30	5
Other[6]	11	2
Improper Off-Duty Conduct	9	2
Improper Disclosure of Information	6	1
Corrupt Practice	3	1
Deceit	2	1
Improper Use and Care of Firearms	1	0
Damage to Police Property	1	0
Total	**553**	**100**

2.3 RESPONDENT OFFICERS

A total of 356 unique respondents were identified among the 294 complaints in the sample. Sixty-two of these respondents (17%) were named in more than one complaint in the sample.

There were 32 complaints (11%) where no respondents were identified (e.g., complaints against an unknown Constable) and four complaints (1%) where the respondent was the police department (i.e., Service or Policy complaints).

Where individual respondents were named, most complaints were against a single respondent (n=149 or 50% of the overall sample). A total of 67 complaints had two respondents (22%) and 24 complaints had three respondents (8%). The highest number of respondents in a single complaint was eight.

2.4 COMPLAINANTS

There were 262 unique complainants identified in the 294 files included in the sample. Eleven of these complainants made more than one complaint (4%). In addition, the police department (or a representative thereof) was noted as the complainant in ten files.

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[3] Each allegation against each respondent was counted. For example, if two respondents were both alleged to have committed the disciplinary default of abuse of authority, two allegations were counted for the file.

[4] This figure includes five allegations identified as "excessive force" on the Notice of Complaint. In the Code of Professional Conduct Regulation, complaints of excessive force fall under the disciplinary default of Abuse of Authority.

[5] This figure includes six allegations identified as breaches of either departmental policy or legislation. In the Code of Professional Conduct Regulation, complaints of this type fall under the disciplinary default of Discreditable Conduct.

[6] This figure includes allegations which did not fully correspond with the disciplinary defaults outlined in the Code of Conduct Regulation and allegations made against the department in Service or Policy complaints.

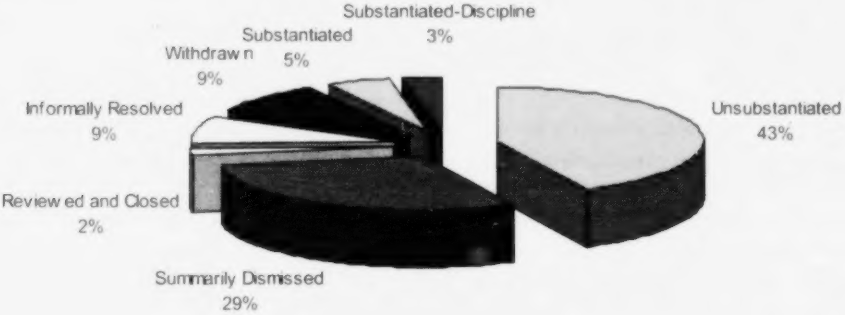
2.5 COMPLAINT DISPOSITION

Overall, the majority of complaints in the sample were concluded as unsubstantiated (n=126 or 43%), followed by summarily dismissed (n=86 or 29%).[7] However, there was considerable variation between departments with respect to complaint disposition. For example:

- the percentage of complaints within each department that were concluded as unsubstantiated ranged from a low of 5% to a high of 69%;
- the percentage of complaints within each department concluded as summarily dismissed ranged from a low of 0% to a high of 78%; and
- While the most common disposition in the overall sample was unsubstantiated, in three police departments the most common disposition was summary dismissal.[8]

The disposition of complaints in the overall sample is summarized in Figure 1. Complaint disposition is discussed in greater detail throughout section 5.

Figure 1 Complaint Disposition[9]



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[7] Where a complaint resulted in different outcomes for different respondents and/or allegations within the same complaint, the most serious disposition was recorded. For example, if a complaint included allegations against some respondents that were summarily dismissed and allegations against another respondent that were substantiated, the complaint disposition was recorded as substantiated.

[8] These figures do not include police departments where fewer than five complaints were selected for inclusion in the sample.

[9] The six "reviewed and closed" complaints included three that were deemed "non-police act" matters, two that were characterized as service or policy complaints and one public trust complaint that was considered a duplicate of another complaint which was processed under Part 9 and summarily dismissed.

3 COMPLAINT CHARACTERIZATION AND PROCESSING

3.1 RECORD OF COMPLAINT

Before a complaint can be processed as a Public Trust or Service or Policy complaint, Part 9 of the *Police Act* requires that it be committed to writing using the prescribed document—the Form 1 Record of Complaint (s. 52 (4)). A Form 1 is not required for an Internal Discipline complaint.

The majority of complaints in the sample were committed to writing using a Form 1 (n=279 or 95%). In addition, two Public Trust complaints and one Internal Discipline complaint were submitted by a complainant in writing, but not via a Form 1. The remainder of complaints appeared to have been raised by the department (n=12 or 4%).

Of the 12 complaints raised by the department, nine included an Order for a Public Trust investigation in the file. Two appeared to have proceeded to a Public Trust investigation without an Order. The remaining case was an Internal Discipline complaint, for which an Order for investigation would not be expected.

3.2 COMPLAINT RECIPIENT

Of the 279 complaints submitted using a Form 1, the majority were submitted to the OPCC (n=177 or 63%). However, this trend varied considerably between departments. The majority of Form 1 complaints involving most Lower Mainland departments, including Vancouver, West Vancouver, New Westminster and Delta, were received by the OPCC. The majority of Form 1 complaints involving the remaining departments were received by the department.

Table 3: Form 1 Submitted to OPCC or Department

Department	Received By:			Total
	OPCC	Police Department	Both	
Abbotsford	3 (27%)	8 (73%)	-	11 (100%)
Central Saanich	2 (50%)	2 (50%)	-	4 (100%)
Delta	7 (78%)	2 (22%)	-	9 (100%)
Nelson	1 (33%)	2 (67%)	-	3 (100%)
New Westminster	9 (82%)	2 (18%)	-	11 (100%)
Oak Bay	-	2 (100%)	-	2 (100%)
Port Moody	-	2 (100%)	-	2 (100%)
Saanich	7 (39%)	11 (61%)	-	18 (100%)
Vancouver	123 (88%)	16 (12%)	-	139 (100%)
Victoria	20 (28%)	50 (69%)	2 (3%)	72 (100%)
West Vancouver	5 (62%)	3 (38%)	-	8 (100%)
Overall Sample	**177 (63%)**	**100 (36%)**	**2 (1%)**	**279 (100%)**

3.3 SUBJECT OF COMPLAINT

Under Part 9, a complaint can be made against a municipal Constable, a Chief Constable or Deputy Chief Constable, or a municipal police department. The majority of complaints in the audit sample were against a municipal Constable (n=283 or 96%), though in some cases the Constable was not identified (e.g., complaints against an "unknown Constable"). Three complaints named a Chief Constable or Deputy Chief Constable (1%). Of these, two were also against the police department (i.e., Compound complaints). Four complaints were against a municipal police department only (1%) and four complaints were against both the department and a municipal Constable (1%).

3.4 NOTICE OF COMPLAINT TO OPCC

Part 9 requires that the Chief Constable inform the Police Complaint Commissioner of all Form 1 complaints that are lodged with the police department (s. 52 (8)). In addition, the Discipline Authority must provide the Police Complaint Commissioner with a copy of the final decision and any recommendations on disciplinary or corrective measures respecting an Internal Discipline complaint (s. 64 (4)).

In addition to the complaints selected for inclusion in the audit sample, the review team examined any complaints which appeared in the list of complaint files provided by police departments which did not appear in the list provided by the OPCC. The review team identified a total of 41 such cases. Generally speaking, the review team was able to reconcile the apparent discrepancies between the lists. The most common explanations were that the complaint was associated with or was a duplicate of another complaint (for which there was a corresponding OPCC file number), or that it was an informal complaint (i.e., there was no Form 1 or Record of Complaint). The review team found that the OPCC was not informed of six internal discipline complaints where disciplinary measures were imposed. This finding is discussed further in section 7. Other observations are summarized in Table 4.

Table 4: Reconciliation of Complaints in Department Lists Only (Not in OPCC List)

	Frequency	Percent
Associated with/duplicate of another complaint in OPCC list	12	29
Non-Lodged Complaint	10	24
Not yet closed by OPCC[10]	6	14
Information File Only (no complaint)	4	10
Corresponding OPCC File Identified	3	7
Internal Discipline Complaint – OPCC Not Notified	6	14
Total	**41**	**100**

Part 9 specifies timelines within which the Chief Constable must inform the Police Complaint Commissioner of Form 1 complaints lodged with the department:

> "[i]f a record of complaint is lodged with a municipal police department, the chief constable for that department must send a copy of that record to the police complaint commissioner within 10 business days after the complaint is lodged" (s. 52 (8)).

To examine compliance with this timeline, the review team noted the number of business days between the date the Form 1 was received by the department and the date on the written notification of the complaint to the OPCC (usually, the "Notice of Complaint"). Form 1 complaints that were initially received by the OPCC (n=177) and complaints that did not include a Form 1 (n=15) were not included in this analysis. In addition, in some cases (n=13), the date the Form 1 was received was not apparent; these cases were also excluded from the analysis. Of the remaining 89 cases, the average length of time between the department receiving the Form 1 and forwarding notice of the complaint to the OPCC was approximately six business days, in compliance with s. 52 (8).[11] Fifteen complaints exceeded the 10 business days timeframe.

3.5 NOTICE OF COMPLAINT TO RESPONDENT

Unless it has been determined that notification could jeopardize a complaint investigation, Part 9 requires that the respondent be notified of any complaints that have been lodged against them and characterized as conduct complaints (s. 52.1 (3)). The review team noted only one complaint where a decision was made to withhold notice to a respondent using this provision.[12]

Based on the documentation contained in the OPCC and department files, the review team noted other cases where the respondents did not appear to have been notified of the complaints. Examples included:

- One complaint that was summarily dismissed and one complaint that was withdrawn before characterization (or preparation of the Notice of Complaint);
- Two complaints that had already been handled either as a non-lodged or a lodged complaint; and
- Two complaints against members who had since retired from the Police Department.

The review team acknowledges that these respondents may have been informed verbally.

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[10] As noted in the introduction to this report, both the police departments and the OPCC were asked to provide a list of all complaints that were closed between June 15, 2003 and June 14, 2005. Six complaints were closed by the department during this timeframe; however they had not yet been closed by the OPCC. As a result, they did not appear in the list of files provided by the OPCC.

[11] Calculated using the "NETWORKDAYS" function in MS Excel.

[12] However, in this case, notice was provided to another respondent involved in the incident. This may have compromised the withholding of notice to the intended respondent.

3.6 COMPLAINT CHARACTERIZATION

Part 9 requires that the Chief Constable or Police Board[13] characterize a complaint *promptly* after they have received the record of complaint (s. 52.1 (1)). A complaint may be characterized as follows:

- Public Trust complaint—in general terms, a complaint about the conduct of a police officer which affects the relationship between the police officer and the public;[14]
- Service or Policy complaint—a complaint about the services or policies of a police department which affects the relationship between the police department and the public;
- Internal Discipline complaint—a complaint about the conduct of a police officer which affects the employee-employer relationship between the police officer and the police department; or
- Compound complaint—a complaint which involves elements of more than one of the above types of complaints.

Once a complaint has been characterized, notice of the decision on characterization must be provided to the Police Complaint Commissioner within 10 business days (s. 52.1 (3)).

A total of eight complaints were not characterized by the police department, representing approximately 3% of the sample. In all but one case, there was an apparent reason for not characterizing the complaint. For example, some complaints were withdrawn or dismissed prior to characterization and some were closed without characterization as they pertained to a matter that had already been concluded (and there was no new information in the complaint).

While in the above referenced cases, complaints were concluded and the matter closed by the OPCC without having been characterized, the review team observed other instances where the OPCC required a complaint to be characterized in order to confirm its conclusion. In some cases, this meant that the department was asked to prepare a Notice of Complaint after the concluding letter had already been distributed.

To examine the timeliness of complaint characterization, the review team calculated the number of business days between the date the Form 1 was received by the police department and the date the complaint was characterized (typically, the date on the Notice of Complaint). The findings reported below were limited by the following considerations:

- Complaints that were initiated without a Form 1 were not included in this analysis (n=15);[15]
- Complaints that were initially received by the OPCC were excluded from this analysis (n=177);
- Cases where the date the Form 1 was received by the department was unclear were excluded (n=13); and
- In three of the remaining cases, the complaint was not formally characterized. These cases were also excluded from this analysis.[16]

Among the remaining 86 cases, the average length of time between receiving the complaint and the date on the Notice of Complaint was seven business days; the median observation was four business days. In most of these cases, the Notice of Complaint was either forwarded to the OPCC on the same date, or at least appeared to have been. As a result, the average length of time between characterizing the complaint and forwarding the characterization to the OPCC was very short at two business days. In three cases, the characterization was forwarded to the OPCC more than 10 business days after characterization, exceeding the timeline specified in Part 9.

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[13] If the complaint appears to be or to include a conduct complaint against a Chief Constable, a copy of the record of complaint must be provided to the Police Board.

[14] Refer to s. 46 (1) of the Police Act for the full definition of a Public Trust default.

[15] These cases were summarized in section 3.1 of this report. They included 12 complaints that were initiated by the police department and three that were raised by a complainant, but not via a Form 1.

[16] A total of eight complaints were not formally characterized. However, five of these were received by the OPCC and were excluded from analysis for this reason (see second bullet).

3.7 CONFIRMATION OF CHARACTERIZATION BY OPCC

In the vast majority of cases, the characterization was confirmed by the OPCC (n=259 or 88%); there were only three instances where the decision was over-ruled by the OPCC. These included: one complaint that was re-characterized from Public Trust to a Non-Police Act matter; one that was re-characterized as a Compound complaint; and one that was re-characterized as a Service or Policy complaint. The remainder of cases were either:

- Withdrawn, dismissed or otherwise cleared prior to characterization or confirmation of the characterization (n=12 or 4%);
- Not characterized (n=1 or <1%); or
- Characterized by the OPCC (n=19 or 6%).[17]

3.8 FINAL CHARACTERIZATION

The majority of complaints in the sample were characterized as Public Trust (n=269 or 92%). In addition there were four Service or Policy complaints, four Internal Discipline and six Compound complaints.

The remainder of complaints were determined to be Non-Police Act matters (n=3 or 1%) or were not formally characterized (n=8 or 3%), either because the matter had already been dealt with, they were withdrawn or dismissed prior to characterization, or there was no complaint or bona-fide respondents specified. Only one complaint appeared to have not been characterized in oversight. Though not formally characterized, these complaints appeared to involve and were treated as matters of Public Trust. That is, they related to alleged misconducts that, if proven, would have affected the relationship between a police officer and the community and were handled using the provisions outlined throughout Part 9 for Public Trust complaints (such as summary dismissal). For the remainder of this analysis, these complaints were treated as Public Trust complaints.

Table 5: Final Characterization

	Frequency	Percent
Public Trust	269	92
Not characterized	8	3
Compound	6	2
Service or Policy	4	1
Internal Discipline	4	1
Non-Police Act	3	1
Total	**294**	**100**

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[17] The majority of these were complaints submitted by the Pivot Legal Society.

4 WITHDRAWALS

Under Part 9, a complainant may withdraw their complaint at any time by filing a written notice of withdrawal with the Discipline Authority or the Police Complaint Commissioner (s. 52.2 (1)). Roughly 10% of complaints in the sample were withdrawn by the complainant (n=30). However, three of these complaints were not ultimately concluded as withdrawn: one was later re-submitted by the complainant; one was withdrawn verbally without a signed withdrawal form; and one was already concluded as unsubstantiated when the withdrawal was received. Consequently, the total number of complaints concluded as withdrawn was 27 (9%).

Part 9 states that if the Police Complaint Commissioner suspects that a withdrawal was made under duress, the Police Complaint Commissioner must undertake reasonable efforts to determine if duress was a factor (s. 52.2 (4)).

The review team noted that when reviewing withdrawals, it often appeared that there was no contact between the OPCC Analyst and the complainant; instead, the OPCC Analyst typically discussed the withdrawal with the Internal Investigator, and reviewed file correspondence such as the Notice of Withdrawal. The review team also observed one instance where the OPCC Analyst discussed the withdrawal with the Crown prosecutor responsible for handling a related criminal charge against the complainant. It was noted that Crown had stayed the proceedings against the complainant on the condition that the complainant withdraw his complaint against the respondent. This example highlighted a concern raised by police officers during interviews that complainants, on some occasions, lodged complaints in attempt to gain leverage in pending criminal or civil matters.

The OPCC did not order continued processing of any of the withdrawn complaints in the sample.

5 PUBLIC TRUST COMPLAINTS

5.1 SUMMARY DISMISSAL

Section 54 (1) of Part 9 contains provisions for the summary dismissal of Public Trust complaints. A total of 90 complaints in the sample included a summary dismissal under s. 54 (1), representing 31% of all complaints in the sample.[18] Of these:

- 78 (87% of all summary dismissals) were dismissed under sub-section (b), which states that "there is no reasonable likelihood th at further investigation would produce evidence of a public trust default";
- Six (approximately 7% of all summary dismissals) were dismissed under sub-section (a), which states that the "complaint is frivolous or vexatious";
- Four (approximately 4% of all summary dismissals) were dismissed under sub-section (c), which states that "the complaint concerns an act or omission that…occurred more than 12 months before the complaint was made"; and
- Two (2% of all summary dismissals) were dismissed using more than one of the above justifications (e.g., sub-sections (a) no likelihood of evidence and (b) frivolous or vexatious).

Part 9 requires that the Discipline Authority provide notice to the complainant, respondent and OPCC within 10 business days of the decision to summarily dismisses a complaint (s. 54 (3)). Compliance with the timeline aspect of this requirement was difficult to assess because the date the decision was made to summarily dismiss a complaint was only rarely distinguishable from the date on the summary dismissal letter. However, the review team observed whether the notice of the summary dismissal appeared to have been provided to the appropriate parties.

In the vast majority of cases, notice was provided accordingly. Exceptions included the following:

- One complaint was amended to a summary dismissal at the OPCC's suggestion (the police department had initially considered the matter to be informally resolved). Because the 30 day review period had already lapsed, notice of the summary dismissal was omitted. However, the complainant was contacted to ensure he was satisfied with the resolution.

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[18] As noted in section 2.5 of this report, a total of 86 of the 294 files in the sample were concluded through summary dismissal. This included one Service or Policy complaint and 85 Public Trust complaints. The 90 complaints discussed in this section which involved a summary dismissal included:

- the 85 Public Trust complaints that were concluded through summary dismissal;
- two complaints that were initially summarily dismissed and later concluded through other means (discussed further in the remainder of this section); and
- three complaints wherein the allegations against some of the respondents were summarily dismissed and either substantiated or unsubstantiated against the other respondents. The disposition of these complaints was characterized in section 2.5 according to the most serious outcome (i.e., substantiated or unsubstantiated). These files are therefore not included in the count of files concluded through summary dismissal in section 2.5.

- Notice was not provided to all parties in two complaints because the matter was considered to have already been handled and there was no new information.
- The department appeared to have failed to notify the respondent in one case; however, the OPCC subsequently included the respondent in the confirmation of the dismissal.

When a complaint is summarily dismissed by the Discipline Authority, Part 9 also requires that the Discipline Authority inform the complainant that they may apply to the Police Complaint Commissioner to review the decision (s. 54 (4)). In the vast majority of the summary dismissals reviewed, complainants were duly informed of this recourse. In two of the three cases where they were not informed, the OPCC required the department to send out an amended letter addressing the omission.

In all cases the OPCC reviewed the summary dismissal and, in most cases, confirmed the Discipline Authority's decision. In one case, the OPCC Analyst requested further information prior to confirming the dismissal. In two cases the OPCC amended the disposition of the complaint: one was amended to "unsubstantiated" and the other to "Non-Police Act".

The review team observed an apparent need for greater clarification between concluding a complaint as summarily dismissed versus concluding it as unsubstantiated. Concluding letters to complainants quite often combined the language that would be used for either of these dispositions. The issue is important because the recourse available to complainants differs between complaints summarily dismissed and complaints concluded as unsubstantiated. For example, when a complaint has been summarily dismissed, the complainant may apply to the Police Complaint Commissioner to review the decision. When a complaint has been unsubstantiated and the Discipline Authority has concluded that no disciplinary or corrective measures are warranted, the complainant may file a request for a public hearing.

Further, the review team noted that considerable investigative work was undertaken prior to summarily dismissing many complaints. For example, among the 90 complaints that were summarily dismissed under s. 54 (1), many included a final investigation report that was similar in content to the final investigation reports prepared for complaints concluded as unsubstantiated. If s. 54 (1) is intended to lessen the resources committed to concluding complaints that are likely to have no basis, it may not be achieving this outcome.

5.2 INFORMAL RESOLUTION

Part 9 also contains provisions for the informal resolution of Public Trust complaints (s. 54.1). Overall, informal resolution was rarely used in the audited complaints. It was attempted in 32 or 11% of all files in the sample and was successfully completed—following the process outlined in Part 9—in 25 or 8% of all files.

However, there was considerable variation between departments in the use of informal resolution. The percentage of files within each department where informal resolution was attempted ranged from lows of 0%, 4% and 5% in three departments to a high of 23% in another.[19] It is important to note that although informal resolution was used more frequently by the latter department, the review team observed that in most of these cases there was no contact between the complainant and the respondent. Instead, a resolution stating that the Internal Investigator or the respondent's supervisor would speak to the respondent and ensure they were made aware of the complainant's feelings was signed by the complainant and, later, the respondent. Complainants were thus required to trust that the action would be completed and carried out in a manner that reflected their wishes.

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[19] These figures do not include police departments where fewer than 5 complaints were selected for inclusion in the sample.

Part 9 states that the Discipline Authority must consider whether informal resolution of the complaint is appropriate (s. 54.1 (1)). The review team found that there was rarely any indication in the file of whether informal resolution was considered. Likewise, if it was considered and determined to be inappropriate, the reason was rarely noted.

Of the seven documented attempts that did not result in a successful resolution under s. 54.1:

- In two cases the complainant declined to participate or later withdrew their consent to the process;
- In four cases a resolution could not be reached despite initial discussions and/or meetings; and
- A resolution was reached in one case; however, it did not satisfy the criteria outlined in s. 54.2 (1) of Part 9. That is, consent forms were not completed and signed by the complainant and respondent; therefore, the OPCC documented the complaint as summarily dismissed.

Part 9 requires that the Discipline Authority notify complainants, respondents and the Police Complaint Commissioner of the results of attempts at informal resolution, whether or not they are successful (s. 54.1 (14)). However, in the four complaints referenced above where informal resolution was initiated but not ultimately successful, there did not appear to be any clear communication to each of the required parties as to these results.

Where complaints are successfully concluded through informal resolution, Part 9 requires that the complainant and respondent sign a letter consenting to the resolution (s. 54.2 (1)). As noted above, the review team noted one case where written consent to the resolution was not obtained and the OPCC concluded the complaint as summarily dismissed rather than informally resolved. In addition, the review team noted three other instances where this requirement was not fully met, yet the complaints were ultimately concluded as informally resolved. These included:

- One case where the consent letter was sent to the complainant for signature but never returned. The complainant had previously consented to the resolution; however, his consent was not obtained in writing;
- One case where the consent letter was signed by the complainant and the officer who handled the informal resolution but not by the respondent officer; and
- One case where the consent letter was signed by the complainant only.[20]

The review team also examined whether consent to the resolution was revoked in any of the cases where an informal resolution was reached. The review team noted one case where the complainant, after having signed the informal resolution, contacted the OPCC to express dissatisfaction with the resolution and request a review. Specifically, one of the complainant's initial interests—the creation of an incident report regarding the theft of items from his home—was not addressed by the informal resolution. File correspondence indicated that the OPCC Analyst contacted the department and was advised that the complainant would receive an incident number. The OPCC ultimately confirmed the informal resolution, albeit with some reservations.[21]

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[20] The OPCC Analyst in this case noted this omission and requested a copy of the respondent's signed consent from the department. Ultimately, the OPCC confirmed the conclusion of the complaint through informal resolution in the absence of this documentation.

[21] This was the same incident described in the above footnote.

The final aspect of informal resolution the review team examined was s. 54.2 (5). This section states that "no disciplinary action may be taken against a respondent as a result of an informal resolution of a complaint until the informal resolution has become binding" (i.e., the 10 business day withdrawal period has passed without consent to the resolution being revoked). The review team noted one file where the respondent appeared to have received a verbal reprimand within the withdrawal period. While the department described the action taken as a verbal reprimand, the OPCC referred to the measure as "managerial advice". It is not clear whether the action taken would have been considered "discipline" for the purpose of this section. Further clarification may be required with respect to this requirement.

5.3 INVESTIGATIONS

Subject to the provisions for summarily dismissing or externally investigating a complaint, Part 9 requires that the Discipline Authority *promptly* initiate an investigation into any Public Trust complaint where informal resolution is either not attempted or is unsuccessful, or an investigation is ordered by the Police Complaint Commissioner (s. 55 (1)). Excluding complaints that were withdrawn[22], informally resolved or reviewed and closed, a total of 231 Public Trust complaints underwent some degree of investigation prior to being summarily dismissed, substantiated or unsubstantiated.[23]

5.3.1 External Investigations

The *Police Act* contains provisions for the Discipline Authority or the Police Complaint Commissioner to order an external investigation into a Public Trust complaint where an external investigation is considered necessary in the public interest (s. 55.1 (1)) .

External investigations were ordered in a total of 15 of the above complaints, including nine complaints submitted by the Pivot Legal Society (hereafter referred to as the "Pivot complaints") and two complaints stemming from the "Riot at the Hyatt" (hereafter referred to as the "Hyatt complaints"). In addition to the nine Pivot complaints and two Hyatt complaints, the Police Complaint Commissioner ordered external investigations in one other complaint. The remaining three external investigations were ordered by Discipline Authorities.

The review team also noted two complaints (both relating to the same incident) where the Discipline Authority requested that a neighbouring police department conduct an external investigation but the request could not be accommodated due to resource considerations. In the end, the matter was investigated internally.

Lastly, the review team noted one complaint where the Discipline Authority requested *assistance* with an internal investigation from another department.

5.3.2 Rank of Investigating Officer

The *Police Act* requires that a person appointed to conduct an investigation into a Public Trust complaint be of at least equal or higher rank than the respondent officer (s. 55.2 (2)). The review team noted two complaints

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[22] While some complaints in the sample were in the process of being investigated when the complaint was withdrawn, for the purpose of this analysis all withdrawn complaints were excluded from the analysis of investigated complaints (unless otherwise specified).

[23] While some complaints in the sample were summarily dismissed following a conscientious preliminary investigation, others—such as those that related to an incident that occurred more than twelve months prior to the complaint being submitted or that were frivolous or vexatious—were concluded promptly, with little investigative activities required. For the purpose of this analysis, all complaints that were summarily dismissed were included in the analysis of investigated complaints.

(both relating to the same incident) where this requirement was not fully met. This complaint involved an Inspector and was referred to another department where a Deputy Chief was initially assigned to conduct an external investigation. However, the department was not able to fulfill the request to conduct the external investigation due to resource considerations. Ultimately, the matter was investigated internally by a Sergeant, under the direction of a Deputy Chief.

5.3.3 SUSPENSIONS WITH PAY PENDING THE COMPLETION OF AN INVESTIGATION

Part 9 contains provisions for suspending a respondent pending the completion of a Public Trust complaint investigation (s. 56.2). There were no suspensions pending investigation in any of the complaints in the sample.

Notwithstanding this finding, interview data suggested that this was an area of difficulty. In particular, s. 56.2 (4) (b) of Part 9 states that it is the Police Board's discretion whether a respondent who has been suspended for more than 30 days will receive pay for any days (beyond the first 30 days of the suspension) that he or she could have worked had the suspension not been imposed.[24] Some interview participants noted a need for greater clarification as to whether there is an active or a passive onus on the Police Board to carry out this decision. One police department and Police Board had received conflicting legal opinions on this issue:

- One opinion stated that, unless the Board determined otherwise, a suspended member would continue to receive pay beyond 30 days suspension; and
- The other opinion stated that, unless the Board determined otherwise, a suspended member would cease to receive pay beyond 30 days suspension.

Other interview participants questioned whether this decision should rest with the Police Board or would fall more appropriately under the responsibilities of the Discipline Authority. Either way, one participant suggested a need for guiding principles to assist with this decision.

5.3.4 EXTENSIONS

The Police Act states that investigations into Public Trust complaints must be completed within six months. However, the Police Complaint Commissioner may grant an extension if:

- New leads are discovered;
- The investigation is unusually complex; or
- An extension is considered necessary in the public interest (s. 56 (9)).

Extensions were granted in a total of 40 Public Trust complaints (14% of all Public Trust complaints). This includes 35 of the 235 Public Trust complaints (or 15%) that were included in the analysis of investigated complaints as well as five complaints that were withdrawn. Three of the latter were Pivot complaints.

Amongst complaints where an extension was granted, the number of extensions ranged from one to six; the average number of extensions was just under three. When the Pivot and Hyatt complaints were excluded from analysis, the average number of extensions dropped to just over one.

The review team attempted to note the reasons for which extensions were requested and granted. In some cases, the reasons were not clearly articulated and in many cases did not correspond to the conditions outlined in s. 56(9) of Part 9. As listed in Table 6 , the most common reasons were the complexity of the investigation and public interest, which were noted in 27 or just over two-thirds of all complaints where an extension was granted.

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[24] Suspended respondent officers must receive pay for the first 30 days that he or she could have worked, unless the misconduct (if proved) would constitute a criminal offence (s. 56.2 (4) (a) and s. 56.2 (5)).

Even though the review team did not specifically examine the OPCC's approval rate for requests for extensions, anecdotally, extensions were generally granted where requested.

Table 6: Reason for Extension

	Frequency	Percent
Complexity	11	27.5
Complexity and Public Interest	10	25
Public Interest	6	15
Awaiting necessary information from complainant	3	7.5
Legal Issues	3	7.5
Awaiting Statements	2	5
Availability of Discipline Authority	1	2.5
Awaiting Discipline Authority review	1	2.5
Awaiting result of attempts at informal resolution	1	2.5
No reason specified	1	2.5
Workload	1	2.5
Total	**40**	**100**

5.3.5 REPORTS ON THE PROGRESS OF AN INVESTIGATION

The *Police Act* requires that the Discipline Authority provide status reports to the complainant, respondent and the Police Complaint Commissioner within 45 days after the start of the investigation and at least every 30 days thereafter, for as long as the investigation continues (s. 56 (1)).

Compliance with the timelines surrounding investigations was difficult to determine. In large part this occurred because the dates of key events or decisions were not consistently noted in the files. Status reports were no exception. For example, the date the investigation was initiated was not specifically noted. In its place, the review team used the date the complaint was lodged. Findings reported in this section are therefore limited.

Of the 231 complaints included in the analysis of investigated complaints, 17 were concluded in less than 45 days, thereby precluding the need for an initial report during the same timeframe. Of the remaining 214 complaints, the review team observed initial reports within 45 days of the date the complaint was lodged in 36 cases (17%) and within 50 days (i.e., coming close to meeting the specified timelines) in an additional 27 cases (13%). In 80 cases (37%), initial reports were not provided within either of these timeframes.[26] Progress reports were either missing or dates were unclear in the remainder of complaints, representing about one third of cases (n=71 or 33%).

Compliance with follow up reporting timelines was more subjective. The review team rated compliance using the following scale:

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[25] Ten of the 12 Pivot complaints in the sample were granted six extensions, citing a combination of reasons including the complexity of the investigation, public interest and later in the process, an unanticipated medical leave by the Discipline Authority. The remaining two Pivot complaints were extended once, citing public interest, and were subsequently withdrawn.

[26] This included four cases where the Police Act proceedings were suspended pending the outcome of criminal charges involving the respondents.

- Excellent (e.g., no reports missing or late);
- Good (e.g., no reports late by more than five days and no reports missing);
- Fair (e.g., some reports late by more than five days and/or some reports missing); and
- Poor (e.g., most reports late and/or missing).

Eighteen of the complaints discussed above were concluded within 75 days of the date the complaint was lodged, which arguably precluded the need for subsequent follow up reports within 30 days of the initial report. Of the remaining 196 complaints, the review team rated compliance with follow up reporting requirements as excellent (n=35 or 18%) or good (n=39 or 20%) in a total of 74 complaints (38%). Fifteen complaints were scored as fair (8%) and 16 were scored as poor (8%). All follow up reports were either missing or dates were unclear in the remainder of cases (n=91 or 46%).

5.3.6 LENGTH OF TIME TO "COMPLETION" OF INVESTIGATION

As noted in the previous section, timelines respecting investigations were difficult to determine and unfortunately, the data obtained by the administrative audit were limited. For example, Part 9 requires that investigators complete an investigation report within 10 business days of concluding an investigation. However, the date an investigation was concluded was rarely noted. Further, in some cases investigation reports were not dated.

Part 9 also requires that the Discipline Authority determine whether disciplinary or corrective measures are warranted within 10 business days of receiving a final investigation report and serve notice of this decision to the appropriate parties (s. 57.1 (1)). The date the final investigation report was provided to the Discipline Authority was rarely noted. In its place, the review team referred to the date on the report, acknowledging the limitations of assuming that it was provided to the Discipline Authority on the same date. The review team noted two additional limitations of this proxy measure: (i) as noted above, in some cases the investigation report itself was not dated; and (ii) in most complaints involving one police department, concluding letters were prepared in place of final investigation reports. The concluding letters contained both the results of the investigation and the Discipline Authority's decision within the same document, making it impossible to differentiate the timing of these stages of the complaint cycle.

In short, compliance with timeline requirements was obscured. Notwithstanding the above concerns and limitations, the review team noted the following:

- The average length of time between the date the complaint was lodged and the date on the final investigation report was 190 days (approximately six months); the median value was 156 days (approximately five months).
- When complaints where an extension was granted were excluded from the analysis, the above figures changed to 140 days (approximately five months) and 113 days (approximately four months), respectively.
- The average length of time between the date on the final investigation report and the "completion" of the investigation[27] was 12 days. When complaints where an extension was granted were excluded from the analysis, the above figure dropped to two days.[28]

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[27] As outlined in s. 56(8) of Part 9, an investigation was considered to have been completed on the date the discipline authority appeared to have reviewed the final investigation report and determined a course of action.

[28] For many complaints in the sample, the investigation report and the Discipline Authority's course of action were contained within the same document (i.e., the concluding letter), yielding an elapsed time of 0 days between these events. This contributed to what was likely an artificially low average number of days between the investigation report and the completion of the investigation by the Discipline Authority.

- While the above overall findings are within the six month timeframe for the completion of investigations specified in Part 9 (s. 56 (7)), this timeframe was not met in a total of 54 cases. This figure dropped to 26 when complaints where an extension was granted (n=28) were not included.[29] Viewed another way, this means that extensions were not requested or granted in 26 or approximately half of the complaint investigations which exceeded six months in length.
- The average length of time between the "completion" of the investigation and the conclusion of the complaint by the OPCC was 105 days (approximately 3 months). When complaints where an extension was granted were excluded from the analysis, the above figure dropped to 82 days (under three months).
- The average length of time between the date the complaint was lodged and the conclusion of the complaint by the OPCC was close to nine months. This figure dropped to approximately seven months when complaints where an extension was granted were excluded.

Although the average length of an investigation reported above falls within the six month limitation specified in Part 9, interview data suggested that there were significant concerns with respect to the timeliness of investigations. Investigations—particularly into "straightforward" complaints—were perceived as taking too long to complete. This was attributed to a number of different factors, including:

- The investigative skills and complaint process experience of some Internal Investigators;
- The heavy caseload carried by Internal Investigators in some departments, and in others, the additional policing duties for which they were responsible;
- The administrative demands of the current complaint process, which some viewed as overly-bureaucratic; and
- Legal challenges created by gaps in or conflicting legal interpretations of Part 9.

The undue length of investigations was perceived as unfair for complainants and respondents, but particularly for respondents who continue to work and interact with the public with an unresolved complaint "hanging over their head". There was considerable interest in amending the process in such a way as to facilitate timelier conclusion of complaints.

5.3.7 DISCIPLINE AUTHORITY'S DECISION REGARDING DISCIPLINARY OR CORRECTIVE MEASURES

Part 9 requires that, within 10 business days of receiving a final investigation report, the Discipline Authority must decide whether the findings contained in the report are sufficient to merit the imposition of disciplinary or corrective measures (s. 57.1 (1)).

Among the 231 Public Trust complaints included in the analysis of investigated complaints, a total of 85 went on to be summarily dismissed. In the vast majority of the 146 remaining cases, the Discipline Authority determined that no *formal* disciplinary or corrective measures were warranted (n=137 or 94%). Formal measures were recommended in nine cases, including: one-day suspensions (three complaints); written reprimands (two complaints)[30]; verbal reprimands (three complaints); and training (one complaint). It should be noted that in 14 of the above complaints, *informal* corrective measures (usually managerial advice or advice to future conduct) were determined to be appropriate.[11]

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[29] Extensions were granted in a total of 40 complaints. However, in 11 of these cases the length of the investigation could not be calculated because dates were either missing or unclear, and in one case an extension was requested but the final investigation report was prepared within six months.

[30] Both written reprimands were later "downgraded" as a result of the prehearing conference. One became a verbal reprimand and the other became managerial advice.

In all but one case, the respondents, complainants and the OPCC were notified of the Discipline Authority's decision, as required by s. 57.1 of Part 9. In the exceptional case, the complainant was treated as a witness by the department but as a complainant by the OPCC. This likely accounted for the omission.

Among the nine complaints where the Discipline Authority determined that formal disciplinary or corrective measures were warranted, the respondents were offered a prehearing conference in seven or 78% of cases. Of these, disciplinary or corrective measures were accepted by the respondents in all but one case. In the exceptional case, the respondent refused to attend a prehearing conference and the Discipline Authority made arrangements for a discipline proceeding to be held. However, an informal corrective measure (i.e., managerial advice) was accepted prior to the discipline proceeding being held. Discipline proceedings were not held for any of the complaints in the sample.

Notwithstanding the limitations associated with the low number of complaints involving disciplinary or corrective measures, there appeared to be a noteworthy variation between departments with respect to their use. While complaints where disciplinary or corrective measures were imposed represented about 3% of all Public Trust complaints, they accounted for close to one-third of all complaints involving one police service (29%). Viewed another way, although complaints involving this police service represented 5% of the overall sample, they accounted for 50% of the eight Public Trust complaints where formal disciplinary or corrective measures were imposed.

Even though it is not a formal means of discipline or corrective measure in the *Code of Professional Conduct*, managerial advice was the most commonly used form of correction. Managerial advice was noted in a total of 16 Public Trust complaints and one Compound complaint. These 17 complaints included three that were informally resolved and one that was withdrawn. There may be a need for greater clarification and consistency surrounding the use of managerial advice. It appeared that in some cases it was considered a corrective measure and in some cases it was not. It was also not clear whether a complaint could still be considered unsubstantiated if managerial advice was given. In some cases the OPCC amended the disposition of a complaint from "unsubstantiated" to "substantiated" or "substantiated-in part" because advice was given.

Finally, it is important to note that because the number of complaints involving formal disciplinary or corrective measures was low, the review team re-sampled and examined *all* complaints involving disciplinary or corrective measures during the two-year period as part of the investigative audit (an additional 30 files). The results of the analyses of these files are included in the investigative audit summary report.

5.4 REQUESTS FOR PUBLIC HEARINGS

The *Police Act* contains three separate provisions whereby a complainant can request a public hearing into a Public Trust complaint:

- If they are aggrieved by the Discipline Authority's decision that disciplinary or corrective measures are not warranted (s. 57.1 (3));
- If they are aggrieved by the disciplinary or corrective measures accepted by a respondent and approved by the Discipline Authority as the result of a prehearing conference (s. 58 (6)); and

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[11] In one of these complaints, training was identified as appropriate for the respondent member; however, this appeared to have been handled informally (i.e., not as a disciplinary or corrective measure).

- If they are aggrieved by the disposition of a complaint proposed by the Discipline Authority as a result of a discipline proceeding (s. 59.1 (3)).

Similarly, respondents may request a public hearing if they are aggrieved by the disposition proposed by the Discipline Authority as a result of a discipline proceeding (s. 59.1 (3)). Respondents are automatically entitled to a public hearing, where requested, if the disciplinary or corrective measure proposed by the Discipline Authority is more severe than a verbal reprimand (s. 60 (3) (a)).

In addition, the Police Complaint Commissioner may arrange a public hearing if it is determined that there are grounds to believe a public hearing is necessary in the public interest (s. 60 (3) (b)).

Complainants requested public hearings in relation to the Discipline Authority's decision regarding disciplinary or corrective measures in 27 of the 283 Public Trust complaints in the sample (about 10%).[32] The Police Complaint Commissioner arranged a public hearing in response to one of these requests, related to the Hyatt complaints. The hearing was held up by legal challenges and ultimately cancelled by the subsequent Police Complaint Commissioner.

There were no other requests for public hearings by complainants or respondents in any of the Public Trust complaints in the sample and none were ordered by the Police Complaint Commissioner under s. 60 (3) (b).

5.5 OVERALL DISPOSITION OF INVESTIGATED COMPLAINTS

Just over half of the Public Trust complaints were concluded through a full investigation and were either unsubstantiated (n=124 or 44% of all Public Trust complaints) or substantiated (n=22 or 8% of all Public Trust complaints). Among the substantiated complaints, formal disciplinary or corrective measures were imposed in eight cases (about 3% of all Public Trust complaints).

There were noteworthy variations between departments with respect to unsubstantiated complaints. The percentage of Public Trust complaints concluded as unsubstantiated within each department ranged from a low of 6% in one department to a high of 70% in another.[33] Departments with low rates of unsubstantiated complaints had, in turn, higher rates of summarily dismissed complaints.

As noted previously in this report, similar types of complaints and complaint investigations appeared to result in different outcomes depending on the police department involved. Complaints that were summarily dismissed by some departments, on the grounds that there was no likelihood that further investigation would produce evidence of a disciplinary default, were more likely to be concluded as unsubstantiated by other police departments. This finding was supported by feedback obtained during interviews. There was a perception amongst some past and present Internal Investigators that the additional investigative resources required to conclude a complaint as unsubstantiated versus summarily dismissed were minimal and worthwhile for the perceived finality of an unsubstantiated complaint. In other words, these Internal Investigators believed that summarily dismissing a complaint left it open to lingering questions or doubt, whereas concluding a complaint as unsubstantiated more patently cleared the respondent officer of any misconduct.

The above observation also speaks to the apparent confusion between the two dispositions and the amount of investigative resources invested in summarily dismissing complaints noted in section 5.1.

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[32] This figure includes 269 Public Trust complaints, six Compound complaints which included a Public Trust element, and eight complaints that, while not formally characterized, were handled as matters of Public Trust.

[33] These figures do not include police departments where fewer than 5 complaints were selected for inclusion in the sample.

6 SERVICE OR POLICY COMPLAINTS

There were a total of 10 Service or Policy complaints in the sample: six characterized as Compound complaints and four Service or Policy complaints alone.

As outlined in Part 9, Police Boards are responsible for Service or Policy complaints involving their department. Upon receiving a complaint, the Board may:

- Request the Chief Constable to investigate and report back on the complaint;
- Initiate a study, with or without assistance;
- Initiate an investigation;
- Dismiss the complaint with reasons; or
- Take any other course of action considered necessary (s. 63.1 (1)).

The review team noted that the decision was often not clearly delineated in the file. However, requesting the Chief Constable to investigate and report appeared to be the most commonly exercised option (n=3 or 30%). In addition, in one case the Board requested an external Chief Constable to investigate and in another, a Sergeant within the same department. In two cases, the Board initiated or ordered an investigation, and in one other case the Service or Policy aspect of the complaint was investigated simultaneous to the Public Trust investigation. Only one complaint was dismissed with reasons.

As required by Part 9, the complainants and the Police Complaint Commissioner were notified of the Board's decisions regarding the course of action to be taken within 30 days after initiating the action. However, there appeared to be less awareness of the requirement to also report this information to the Director of Police Services (s. 63.1 (3)). The Director of Police Services did not appear to have been informed in two cases, and in another was notified several months later.

At the conclusion of an investigation, Part 9 also requires that the Board notify the complainant, the Director of Police Services and the Police Complaint Commissioner of the results (s. 63.1 (5)). This requirement appeared to have been met in all ten cases.

In each case, the Board's decisions were reviewed by the OPCC. In one case, the OPCC recommended a further course of action, as provided by s. 63.1 (7). In this case, the OPCC suggested that a reminder be distributed to all sworn personnel regarding the department's policy on the issue in question.

7 INTERNAL DISCIPLINE COMPLAINTS

There were four Internal Discipline complaints in the sample. In all four cases, the Police Complaint Commissioner was provided with a copy of the recommendations on disciplinary or corrective measures resulting from the complaint and the final decision reached by the Discipline Authority, as required by s. 64 (4). Disciplinary or corrective measures were applied in one case. Two complaints were concluded as unsubstantiated and one was withdrawn.

The *Police Act* provides that the Police Complaint Commissioner may determine, based on the information received, that an Internal Discipline complaint should be dealt with as a matter of Public Trust and order a further investigation or a public hearing (s. 64 (7)). The department's handling of all four Internal Discipline complaints in the sample was confirmed by the OPCC.

In addition to the four Internal Discipline complaints in the sample, the review team noted six internal discipline complaints listed in departmental records for which no corresponding OPCC file number could be located. In these six cases, all involving the same department, discipline was imposed; however, the OPCC was not informed and did not have any records of the complaints. The discipline imposed ranged from verbal and written reprimands through to termination. In keeping with department practice, these and all internal discipline complaints were handled by the department's Human Resources Section.

Representatives of the OPCC advised the review team that, as a result of this audit, they had been informed of the above files and had since been working with the department on receiving more detailed information on these and other internal discipline files handled by the Human Resources Section. In correspondence with the department, the OPCC noted concerns that some of the allegations in these files should have been the subject of a Public Trust investigation. Although the OPCC had requested more detailed information in November 2005, they had yet to receive synopses of any of these files more than six months later.

8 OTHER OBSERVATIONS

8.1 CIVIL ACTION

The review team recorded whether civil proceedings appeared to have been pursued in relation to each complaint. There was at least some reference to civil action against the department or respondent in a total of 14 complaints (5%), though it was not consistently clear whether the complainant followed through on this interest.

8.2 CRIMINAL CONDUCT

The review team noted that criminal conduct on the part of respondents was documented in a total of eight complaints (less than 3%). In all but one case, Crown Counsel was informed. In the exceptional case, the victim of the assault did not wish to pursue the matter in any way—either criminally or as a police complaint.

8.3 COMPLAINTS MADE IN CONFIDENCE

The *Police Act* contains provisions for the submission of complaints in confidence (s. 65.1). The review team noted only two complaints that were submitted in confidence. Both of these complaints were made by sworn members.[14]

8.4 ERRORS AND INCONSISTENCIES

While not included in the audit tool and therefore not documented on a consistent basis, the review team observed a considerable number of administrative errors in the complaint files in the sample. These included filing documents under the wrong file number (in some cases resulting in delays in closing a file), incorrect cross-referencing of Discipline Authority and OPCC file numbers, incorrect dating of documents (in particular, typing the wrong year), incorrect spelling of complainants' names, and inconsistency in key decisions (e.g., whether a complaint can be concluded without having been characterized). While minor in nature, these errors may detract from public and police confidence in the complaint process.

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[14] In addition to the above confidential complaints, the review team noted 14 other cases where the complainant was a sworn member. In five of these cases, however, it appeared that a member signed the Form 1 for administrative purposes (i.e., there was no complaint from the public; however, the department wished to pursue the matter as a Public Trust complaint).

9 INFORMAL OR "NON-LODGED" COMPLAINTS

In addition to the formal complaints that were selected for inclusion in the audit, the review team reviewed a number of informal or "non-lodged" complaints at most departments.

The review team noted considerable range in the manner in which informal complaints were handled and, in particular, how information about these complaints was managed across the 11 police departments. In some cases, while hard copy files were available there was no "log" or record of complaints that would, for example, assist the department in identifying potential performance or training issues when members became the subject of multiple, similar complaints. Other departments had recently begun to track informal complaints in MS Excel spreadsheets or MS Word tables. The Saanich Police Department was in the practice of logging both formal and informal complaints in the same database system (discussed in greater detail in s. 10).

The variation in the record keeping of informal complaints affected each department's capacity to fulfill the review team's request for information. As a result, the sampling methods used to identify files to include in the audit of informal complaints differed between departments. In most cases, the review team was able to extract a random sample from the list of all complaints opened or closed during the review period while in other departments less systematic methods were used (e.g., pulling every fifth informal complaint file). Unlike the audit of formal complaints, the number of informal complaints reviewed at each department was not proportional to the total population of informal complaints.

In general, the review team examined a total of 15 informal complaints from most departments. Exceptions included the Abbotsford Police Department, where 14 files were reviewed, West Vancouver (n=11) and Vancouver (n=20).[35] In addition, informal complaints were not examined at the four smallest police departments (Central Saanich, Nelson, Oak Bay and Port Moody). In total, 105 informal complaints were reviewed.

The main purpose of this review was to determine whether complaints were being handled informally which should have been brought to the attention of the OPCC. This issue was addressed primarily by the investigative audit (refer to the investigative audit report for a summary of the findings). The data reported here are included to provide descriptive information about the informal complaints that were reviewed.

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[35] Abbotsford Police Department was the initial or "pilot" site for the audit of both formal and informal complaints. At this department, the review team examined half of all informal complaints included in the list, which amounted to 14 files. While at West Vancouver Police Department, the review team was only able to review 11 files due to time constraints in the audit schedule. At Vancouver Police Department, the review team identified a sample of 30 informal complaint files for audit. However, staff of the professional standards section were unable to locate some of the selected files. Twenty files were reviewed.

Of the 105 informal complaints selected for review, a total of 14 were not relevant to the main purpose of the review noted above (i.e., whether complaints were handled informally which should have been brought to the attention of the OPCC) and were excluded from further analysis.[16]

Of the 91 informal complaints included in further analysis:

- One third (n=30 or 33%) were similar to allegations of "abuse of authority" (e.g., complaints that an officer did not have the authority to detain and question a complainant or allegations that the complainant was being unduly targeted by police);
- Twenty (22%) were similar to "neglect of duty" (e.g., complaints that an officer did not adequately investigate an incident or failed to charge someone involved in the incident); and
- Twelve (13%) were similar to allegations of "discreditable conduct" (e.g., complaints that an officer was rude or unprofessional).

The remainder of complaints are summarized in Table 7.

Table 7: Informal or "Non-lodged" Complaints by Type

	Frequency	Percent
Abuse of Authority	30	33
Neglect of Duty	20	22
Discreditable Conduct	12	13
Other	10	11
Service/Policy Complaint	5	6
Improper Use or Disclosure of Information	4	4
Not specified[17]	4	4
Internal Discipline	3	3
Improper Off Duty Conduct	2	2
Improper Care of Firearms	1	1
Total	**91**	**100**

There was indication that complainants were provided with a Form 1 (or information about filing a Form 1) in 22 of the 91 non-lodged complaint files (24%). In six of these cases, it was clear that the complainant subsequently completed a Form 1; however, two of these were not forwarded to the OPCC. As a consequence, only four of the 91 non-lodged complaints (4%) went on to be processed as lodged complaints under Part 9 of the *Police Act*. In addition, in three cases the department requested that the OPCC order an investigation (3%). In total, the OPCC appeared to have been notified of 11 of the 91 non-lodged complaints.

Excluding complaints that were ultimately processed under Part 9 (i.e., the four lodged Form 1 complaints and three ordered investigations referred to above), about one third of the remaining 84 non-lodged complaints examined were concluded informally (n=30 or 36%). This meant, for example, that the department offered an explanation for the officers' actions. This practice does not necessarily compare with an informal resolution under s. 54.1 of Part 9, where the complainant is required to consent to the resolution. As such, comparison with the results of the audit of lodged complaints is therefore limited. However, the review team noted that the use of informal means of concluding complaints was more evenly distributed across the 11 police departments for non-lodged complaints compared with lodged complaints.

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[16] These included the following:

- Five complaints against a civilian employee and once complaint involving a CN Rail officer;
- Four information files (e.g., shadow files of regular investigations or information disclosed by a member where a complaint was anticipated but never received);
- Three internally generated reviews (e.g., policy issues reviewed by a department at its discretion in the absence of a complaint from the public);
- One "Non-Police Act" matter. In this case, the matter was brought to the attention of the Police Complaint Commissioner who determined that the matter was not relevant to the provisions of the Police Act.

[17] These cases were information files simply to document that a complainant was provided with a Form 1.

After complaints that were concluded informally, the second most common disposition was unsubstantiated (n=14 or 17%). The review team was also unable to determine a clear outcome in 14 or 17% of cases. Respondents received managerial advice in five or approximately 6% of cases. The disposition of all informal complaints is summarized in Table 8.

Table 8: Outcome of Informal or "Non-lodged" Complaints

	Frequency	Percent
Informally concluded	30	36
Unsubstantiated	14	17
Not Clear	14	17
Abandoned or Withdrawn	9	11
Concluded	6	7
Managerial Advice	5	6
Awaiting Complainant's Decision	4	5
Substantiated	2	2
Total	**84**	**100**

10 BEST PRACTICES

Some of the best practices observed by the audit team included:

- *Information Management Systems:*

  Saanich PD has developed a database to assist in managing complaint information. Among other benefits, the database includes features that have the potential to:

  - Save time and reduce errors associated with administrative tasks by populating "tombstone" and other complaint data into report templates;
  - Assist Internal Investigators in meeting timelines by automatically calculating diary dates for progress reports and the date by which an investigation must be completed;
  - Improve the department's tracking of and accountability for informal or "non-lodged" complaints;
  - Assist management in identifying performance or training issues by tracking multiple complaints against individual respondents or multiple complaints of a similar nature.

- *Written application of management advice:*

  In some cases where managerial advice was determined to be appropriate, the Vancouver Police Department prepared a written copy of the advice, which was signed by the respondent acknowledging that they had received and understood the advice.

- *Acknowledgement letters to complainants from departments:*

  Both the Victoria Police Department and the West Vancouver Police Department sent letters to complainants acknowledging receipt of their complaint, which provided the complainant a copy of their Form 1, the Notice of Complaint, a guide to the complaint process, a list of support groups, the name of the investigator and their complaint file number. The form letter used by Victoria City Police also requested that complainants notify the investigator of any changes to their contact information.

11 SUMMARY AND CONCLUSIONS

Overall, the review team had a number of concerns with respect to compliance with the administrative aspects of the complaints process, as outlined in Part 9 of the *Police Act*. Where procedural requirements were not met, they often reflected areas where there may be a need for greater clarification or areas where there may be insufficient resources. For example, in both cases where the requirements with respect to the rank of the investigating officer did not appear to be fully met, the department had requested an external investigation but the external agency did not have the resources to fulfill the request.

Areas where the review team noted more prevalent concerns with respect to compliance included:

- *Progress reports.* Initial reports were either more than five days late or missing in about two-thirds of all investigated complaints included in the analysis. Similarly, 30 day progress reports appeared to be missing in about half of these complaints. Anecdotally, the content of some progress reports was extremely minimal—in some cases providing no other information than that the investigation into the matter was still ongoing.
- *Timeliness of Investigations and Extensions.* While the average length of investigations fell within the six month timeframe specified in Part 9, at least 54 of 136 investigations[18] (40%) exceeded six months in length. Extensions were requested in about half of these cases. Where extensions were requested, they were generally granted.
- *Length of Time Between the Conclusion of an Investigation and the Discipline Authority's Decision Regarding Outcome and Disciplinary or Corrective Measures.* The Police Act specifies that the Discipline Authority must provide a summary of the investigation to complainants and respondents, including findings, conclusions and the Discipline Authority's decision regarding disciplinary or corrective measures, within 10 business days after receiving the final investigation report. Compliance with this requirement was often obscured by the absence of discrete dates separating the investigator's completion of the final report from the Discipline Authority's decisions which resulted from the report.
- *Disciplinary or Corrective Measures.* Formal disciplinary or corrective measures were rarely imposed (applied in 3% of files in the sample). Where they were imposed, it appeared that the lack of experience contributed to the discipline process not unfolding as anticipated. For example, in two of the eight cases where formal disciplinary or corrective measures were imposed, it appeared that the respondent was not offered a prehearing conference. This finding may have resulted from an absence of clear documentation in the files. In another case, the respondent

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[18] Where timelines could be calculated.

refused the prehearing conference and an informal corrective measure (i.e., managerial advice) was later accepted outside of either a prehearing conference or a discipline proceeding.

Other concerns the review team identified included:

- *Un-characterized complaints.* In some cases, the OPCC required a complaint to be characterized in order to confirm its conclusion while in other cases it did not. Where it was required, the department was in some cases asked to prepare a Notice of Complaint after the complaint had already been concluded.
- *Summary Dismissal.* There appeared to be a need for clarification in the use of s. 54 (1) (b) (i.e., summary dismissal where there is no likelihood that further investigation would produce evidence of a Public Trust default). The review team noted that in some files the language used and the amount of investigative work described in the concluding letter more closely resembled a complaint concluded as unsubstantiated, rather than a summary dismissal.
- *Informal Resolution.* Informal resolution was rarely used, accounting for about 8% of the overall sample. Where it was used, the substance of the agreement often led review team members to question complainant satisfaction. For example, many informal resolution consent letters stated simply that the respondent's supervisor would speak to the respondent to ensure they were aware of the complainant's feelings.
- *Managerial Advice.* While not included as a corrective measure in the Code of Conduct Regulation, managerial advice or advice to future conduct was the most commonly used form of disciplinary or corrective measure. The review team noted that managerial advice was given in a total of 17 complaints (6%).
- *Internal Discipline Complaints.* The OPCC appeared to be encountering difficulties in exercising its oversight responsibilities with respect to internal discipline complaints. In the absence of sufficient information regarding some internal discipline complaints, the OPCC had been unable to conclude in a timely manner whether they should have been dealt with as matters of Public Trust.
- *Administrative errors.* The review team noted a considerable number of administrative errors which may detract from complainants' and respondents' confidence in the process.

APPENDIX C

REPORT ON THE INVESTIGATIVE AUDIT CONDUCTED FOR THE REVIEW OF THE POLICE COMPLAINT PROCESS IN BRITISH COLUMBIA

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August 2006

TABLE OF CONTENTS

1 **INTRODUCTION** 5

2 **REVIEW** 6
- 2.1 Lodged Complaints 6
- 2.2 Non-Lodged Complaints 6
- 2.3 The "Discipline" Files 7
- 2.4 Categories Of Complaints 7
- 2.5 Our Approach 8
- 2.6 Our Findings 9

3 **THE POLICE ACT** 10
- 3.1 Section 46 (Definitions) 10
  - 3.1.1 "Complainant" 10
  - 3.1.2 "Respondent" 10
- 3.2 Section 52 11
- 3.3 Section 52.1 12
- 3.4 Section 52.2 12
- 3.5 Section 54 13
- 3.6 Other Statutory Issues 13

4 **NON-LODGED COMPLAINTS** 16

5 **CHARACTERIZATION** 19

6 **SUMMARY DISMISSAL** 21
- 6.1 Inconsistencies Among Departments In The Use Of Summary Dismissal 22
- 6.2 Summary Dismissal Versus Final Determination 23
- 6.3 Inappropriate Investigators' Comments 24

7 **INFORMAL RESOLUTION** 26
- 7.1 "Informal Resolution" Leading To Withdrawal 26
- 7.2 "Informal Resolution" Of Unsubstantiated Complaints 27
- 7.3 Non-Compliance With S. 54.2 27
- 7.4 Inappropriate Use Of Informal Resolution 28

8 **INVESTIGATION** 31
- 8.1 Investigator Selection, Training, Supervision And Retention 31
- 8.2 Inappropriate Or Unprofessional Communications 32
- 8.3 Investigative Delay 33
- 8.4 Investigative Rigour 35
- 8.5 Background Investigations Of Complainants 37
- 8.6 Reluctance To Conduct Full Criminal Investigations 37
- 8.7 Duty Statements & Disclosure Of Evidence To Respondents 39

9 **EXCESSIVE FORCE** 41

10 **BREACHING** 44

11 **SEARCH AND SEIZURE & IMPROPER HANDLING OF PROPERTY** 45

12 **REVIEW BY CROWN COUNSEL** 46

13 THE DISCIPLINE AUTHORITY 47

- 13.1 Delegation Of Discipline Authority Responsibilities 48
- 13.2 Insufficient Involvement In The Decision-Making Process 48
- 13.3 Failure To Ensure Statutory Compliance 49
- 13.4 Lack Of Documentation Demonstrating Active Discipline Authority Supervision 49
- 13.5 Offering Prehearing Conferences In Serious Cases 51
- 13.6 No Consideration Of Overall Trends 53

14 LACK OF SUBSTANTIATED COMPLAINTS 54

15 "INFORMAL" DISCIPLINARY ACTION 55

16 THE "DISCIPLINE" FILES 56

ANNEX I: LODGED COMPLAINT QUESTIONS 58

ANNEX II: NON-LODGED COMPLAINT QUESTIONS 60

1 INTRODUCTION

We were asked to review a random sample of lodged[1] complaints from the 11 independent municipal police departments in British Columbia (the "Departments"). The sample was identified by the Police Services Division of the Ministry of Public Safety and Solicitor General.

In conducting our review, we were asked to focus on the following questions:

How are complaints handled by municipal police Departments? Without limiting the generality of the foregoing:

1. What efforts are made to gather necessary evidence to complete investigations?
2. What actions are taken by management to facilitate the complaint process?
3. Are the decisions made with respect to complaints appropriate based on the evidence in the complaint files, including:
    - Complaint classification (e.g., public trust, internal discipline or service or policy);
    - Disposition (e.g., summarily dismissed, informally resolved, unsubstantiated, substantiated); and
    - Disciplinary action taken.
4. Is the adjudicated discipline imposed?
5. Are complaints finalized within a reasonable time period?

During the months of December, 2005, and January and February, 2006, we traveled to Abbotsford, New Westminster, Delta, West Vancouver, Central Saanich, Oak Bay, Victoria, Saanich, Vancouver, and Port Moody to review complaint files that had been identified for our sample. The complaint files from the Department in Nelson that had been identified for our sample were made available to us for review in the Lower Mainland.

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[1] This refers to complaints that are formally "lodged" in accordance with s. 52 of the *Police Act*, RSBC 1996, c. 367 (the "*Police Act*").

2 REVIEW

2.1 LODGED COMPLAINTS

There were 294 lodged complaints in the sample. For each of them, we reviewed the complete complaint file from the Department in question. We also had access to and, as necessary, reviewed the corresponding file maintained by the Office of the Police Complaint Commissioner (the "OPCC").

Both of us personally reviewed the Department's complete file for every complaint in the sample.[2] Our review was based on a form of audit outline that we had created for our review.[3] The first reviewer took primary responsibility for completing the audit outline for any given file. Occasionally, the second reviewer would suggest changes or additions to the audit outline. For each file, we reached consensus on our conclusions and filled out and signed one audit outline, the contents of which we used as the basis for this report.

2.2 NON-LODGED COMPLAINTS

In addition to the lodged complaint files in the sample, we also reviewed any available files or records maintained by the respective Departments for "non-lodged" complaints.[4] There were a total of 100 non-lodged complaints in respect of which we reviewed files or records. The primary focus of our review of non-lodged complaints was to determine whether they could or should have been dealt with under Part 9 of the *Police Act*.

The record keeping for non-lodged complaints varied from Department to Department. Generally speaking, though, the records of non-lodged complaints were far less comprehensive than the files kept for lodged complaints. From the information available, we were often unable to determine the precise nature of non-lodged complaints or the steps, if any, that Departments had taken to respond to them. For each of the non-lodged complaints,[5] we completed a form of audit outline that was simpler than the one we created for lodged complaints.[6]

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[2] There were a few files in respect of which one or the other of us declared a conflict based on past knowledge of or dealings with the Complainant. In those cases the one of us who had declared the conflict neither reviewed the file nor participated in completing the audit outline.

[3] A copy of the outline we used for lodged files is attached as Annex I to our report.

[4] This refers to complaints that are not formally "lodged" in accordance with s. 52 of the *Police Act*.

[5] We did not complete audit outlines for the non-lodged complainants from one Department, whose files we reviewed without the benefit of our outline.

[6] A copy of the outline we used for non-lodged files is attached as Annex II to our report.

2.3 THE "DISCIPLINE" FILES

The final group of files that we reviewed were a total of 30 lodged complaint files in which some degree of discipline or correction was said to have been imposed. These "Discipline Files" originated from Delta, New Westminster, Saanich, Vancouver, Victoria, and West Vancouver. We were asked to review them after it became clear that only a small percentage of the complaint files in the main sample had actually resulted in the imposition of any form of disciplinary or corrective action.

For our review of the Discipline Files we did not have access to the Departments' files. We reviewed only the files kept by the OPCC. We knew from our review of the files in the main sample that the OPCC files often did not contain the entire contents of the investigative files maintained by Departments. This was also true of the Discipline Files and sometimes it limited what we could say about the Discipline Files or the level of confidence with which we could say it.

2.4 CATEGORIES OF COMPLAINTS

After our review of the files, and to assist us in preparing our report, we attempted to divide the public trust complaints we had reviewed into rough categories. These were based on our sense of the primary discipline default being alleged in the complaints, as reflected in our own brief summaries of the complaints in the completed audit outlines. Our categorization is not intended, and should not be taken, as a systematic, empirical, or statistically valid analysis.

Occasionally, Complainants expressly alleged one or more of the specific discipline defaults set out in s. 4 of the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98 (the "*Code of Conduct*"), which might assist us to classify them. Often the Discipline Authority[7] would, in characterizing the complaint, attempt to identify the broad category of default into which it fell. This too would help us to categorize complaints but the practice was neither uniform nor systematic across the Departments. Our categorization does not necessarily accord with the characterizations provided by the Discipline Authorities.

A significant number of the complaint files we reviewed involved abuse of authority in one form or another as the primary complaint.[8] Many complaints involved allegations of excessive force, unjustifiable arrest, or improper search and seizure, all of which are categories of abuse of authority as that is defined under s. 10 of the *Code of Conduct*. For the purposes of our rough classification we tried to distinguish between these forms of alleged abuse of authority.

Issues with arrest we categorized under the general heading of abuse of authority, except that we specifically identified complaints involving so-called "SIPP" arrests[9] and the so-called practice of "breaching"[10] suspects.

In addition, we tried to identify complaints involving other specific discipline defaults, including neglect of duty, discreditable conduct that fell below or outside the category of abuse of authority, improper off duty conduct, and improper disclosure of information. We also specifically identified complaints that primarily involved the failure to deal properly with Complainants' property, which, depending on the context, could also amount to neglect of duty, discreditable conduct, or abuse of authority.

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[7] See: the definition of "discipline authority" in s. 46 of the *Police Act*.

[8] There is a confusing overlap between the definitions of "abuse of authority" and "discreditable conduct" under the *Code of Conduct*, whereby abuse of authority seems to encompass conduct that is both more serious (e.g. "unnecessary force", "harassment", and "intimidation") and less serious (e.g., acting in a manner that is "discourteous" or "uncivil" while on duty) than discreditable conduct (which includes on duty conduct that is "likely to discredit the reputation of the municipal police Department with which the police officer is employed"). The *Code of Conduct* would be clearer and more comprehensible if some attempt were made to distinguish more clearly between conduct that constitutes "discreditable conduct" and that which constitutes "abuse of authority".

[9] This refers to an arrest for being found severely "intoxicated in a public place", pursuant to s. 41 of the *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267.

[10] This refers to briefly arresting and moving a suspect on the ground of an "apprehended" breach of the peace, pursuant to s. 31 of the *Criminal Code*, R.S.C. 1985, C-46.

The results of our rough classification are set out in the table below.[11]

	Main Sample	Discipline Files	Non-Lodged
Excessive Force	92	4	12
Abuse of Authority[12]	81	10	18
Neglect of Duty	61	2	19
Discreditable Conduct[13]	22	6	7
Improper Search and Seizure	23	1	6
Improper Handling of Property	17	1	5
Improper Off Duty Conduct[14]	10	5	1
Improper Disclosure of Information	7	2	3
SIPP	7	-	-
Breaching	6	-	-

2.5 OUR APPROACH

The authors of this report are a 28-year member of the RCMP, with extensive experience in conducting and overseeing internal investigations into alleged police misconduct, and a Ministry of Attorney General lawyer, with more than 14 years of legal experience, including several years as Crown counsel.

We recognize that policing is a stressful, complex, and dangerous occupation and one without which our society could not function properly. We also understand that police officers' duties to uphold the law and investigate crime give them extraordinary powers. The daily activities of police officers, perhaps more so than those of any other occupational group, can have serious, sometimes grave, effects on the lives and liberty of citizens. For that reason, policing in a free and democratic society carries with it the added burden of public accountability.

The form and focus of our report is narrative rather than statistical. Some numbers and percentages can be generated from our work and, where appropriate, we have referred to them in our report. We have also had the benefit of statistical information generated by an administrative audit carried out by a team from Police Services Division and, where appropriate, we have also referred to those data. In reviewing the files and in writing our report, however, we have tried to identify and describe particular concerns about the files, rather than trying to compile empirical data.

The majority of the complaint files we reviewed demonstrated to us that, on the whole, the Departments are investigating and concluding public complaints in a manner that is both reasonable and appropriate. We saw many fine examples of professionalism, thoroughness, and objectivity in the handling of police complaints but we have not dwelled upon those in our report because we viewed our task as one of critical review and analysis.

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[11] There is some overlap among the identified categories of complaints. Some complaints involved more than one primary alleged default. Some complaints could not be easily classified. For these reasons, the totals in the table do not add up to the same number of public trust complaint files that we reviewed.

[12] This includes improper arrests but not improper searches, SIPPs, or Breaches.

[13] This includes all conduct falling below or outside the category of abuse of authority and refers, for the most part, to on duty conduct that is "likely to discredit the reputation of the municipal police Department with which the police officer is employed."

[14] Several cases involved the commission of an offence while off duty. Although we could have, we did not separately identify these cases under the default of committing an offence under s. 4(j) of the *Code of Conduct*.

The thrust of our work has been to identify and describe specific issues or concerns related to the handling of complaints and, where appropriate, to criticize the handling of complaints by the Departments. Even in cases in which the ultimate result appeared to us to have been reasonable and appropriate, sometimes we identified issues for criticism. In rare cases our concerns and criticisms related to all aspects of the handling of particular complaints, including the underlying police conduct, the investigation of the complaint, and the actions of the Discipline Authority. From our review we also tried to identify problems associated to specific provisions of Part 9 of the *Police Act*, some of which may indicate that amendments should be considered.

Having conducted a detailed review of more than 400 complaint files, we have had a good opportunity to examine all aspects of the process for dealing with complaints under the *Police Act*. The investigation and handling of complaints by the Departments is a key part of that process but it does not occur in a vacuum. The oversight by the OPCC also has a significant bearing on the way that complaints are investigated, handled, and concluded. The OPCC's handling of complaint files fell outside our terms of reference, however, so we have not commented upon it in this report.

2.6 OUR FINDINGS

As a result of our review, we identified a number of specific concerns or criticisms, which we have grouped under the following general headings:

- The *Police Act*;
- Non-Lodged Complaints;
- Characterization;
- Summary Dismissal;
- Informal Resolution;
- Investigation;
- Excessive Force;
- Breaching;
- Search and Seizure & Improper Handling of Property;
- Review by Crown Counsel;
- The Discipline Authority;
- Lack of Substantiated Complaints;
- "Informal" Disciplinary Action; and
- The "Discipline" Files.

We will discuss each of these issues in detail in the pages that follow.

3 THE POLICE ACT

Underlying several of the concerns we identified in our review were problems with the current form of the *Police Act*, which is in some respects too detailed and in other respects not detailed or clear enough. In our view this has contributed to problems in the intake, handling, investigation, and closing of files by the Departments and it has weakened the OPCC's oversight function. In some instances, it appears that Departments have simply neglected or chosen not to comply with certain provisions of the *Police Act*.

What follows is a brief discussion of some of the provisions of the *Police Act* and associated problems that we noted in the course of our review.

3.1 SECTION 46 (DEFINITIONS)

3.1.1 "COMPLAINANT"

We saw a few cases in which Departments treated complaints by a lawyer or agent on behalf of a Complainant as third party complaints, thereby giving rise to lesser obligations of notice and disclosure. There is no reasonable basis for restricting complaints made by an agent on behalf of the Complainant in this way. The definition of "Complainant" should include the Complainant's lawyer or agent.

3.1.2 "RESPONDENT"

In some of the files we reviewed, the fact that the Respondent was no longer on active duty was held up as a basis for removing the complained of conduct from scrutiny under the *Police Act*. The public interest in accountability continues even after the Respondent is no longer on active duty. This is particularly so when the retirement, resignation, or medical leave of the Respondent may have come about in whole or in part as a result of the conduct giving rise to a complaint. We think the *Police Act* should be clarified in its application to officers who have retired, resigned, or gone onto medical leave since the incident or conduct giving rise to a complaint. It may also be appropriate for the OPCC to have some specific powers of oversight over "deals" reached to send officers to pension or onto medical leave when they are under investigation or facing discipline under the *Police Act*.

These are examples of files in which issues arose about who could be considered a "Respondent" under the *Police Act*:

- File Example #1: An officer who was off duty and on extended medical leave was arrested in another jurisdiction and charged with impaired driving. The Discipline Authority wrote to the OPCC advising of the arrest and suggesting that no Form 1 needed to be filed pending the outcome of criminal proceedings. The then Police Complaint Commissioner concurred. Ultimately Crown counsel accepted a guilty plea to a Motor Vehicle Act offence and the officer resigned, after which the Discipline Authority wrote to the OPCC stating that a Form 1 was no longer appropriate. The OPCC replied by stating that the OPCC may have provided "mixed messages" previously but the current Police Complaint Commissioner believed that the *Police Act* continued to give him jurisdiction even after officers resign or retire. The OPCC then concluded that the complaint would be deemed to be lodged and substantiated but that no disciplinary or corrective measures were appropriate.[15]
- File Example #2: The Discipline Authority wrote to the OPCC forwarding the investigation report and advising that the officer had retired therefore the file would be closed. The OPCC replied that the matter was substantiated but no disciplinary sanction was imposed as the officer had resigned.

3.2 SECTION 52

The requirement that a complaint must be lodged in the prescribed form before it can qualify for formal treatment under the *Police Act* seems to us to be unduly formalistic. We saw many cases of so-called non-lodged complaints, which, although not in the prescribed form, were written and signed by the Complainant and which contained detailed particulars that would have been sufficient to merit full investigation and handling under the *Police Act*.

Many of the non-lodged complaints we reviewed appeared to disclose allegations of significant or serious public trust defaults that, notwithstanding the lack of a Form 1, ought to have been fully investigated and reported on, and, in a few cases may have justified formal discipline under the *Police Act*.[16]

These are some files that raised questions about the wisdom of requiring all complaints to be formally lodged:

- File example #3: A note on the police file indicated: "matter initially assigned as a Non-lodged file". The requirement to complete a Form 1 served only to delay the process.
- File example #4: The Complainant wrote a letter of complaint in September 2003 and again in January 2004 and did not receive a reply. She submitted a Form 1 in February 2004. Her initial letter to police clearly alleged discipline defaults yet she was not advised about the requirement to complete a Form 1 or the process involved in processing complaints. The requirement of a "Form 1" delayed the process and inconvenienced the Complainant unnecessarily.
- File example #1: The OPCC wrote to the Department advising as a matter of policy that a signed letter of complaint, though not in Form 1, should be deemed to be a legal complaint under the *Police Act*. This policy does not appear to have been communicated to the Departments or applied consistently by them, or the OPCC.[17]
- File example #5: This file involved complaints from three different citizens, who contacted the police to complain about a service and policy matter. While some of the complaints were in

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[15] This file is also cited as an example in Section 3.2 of the report.

[16] We will discuss our concerns about the handling of Non-Lodged complaints in more detail below.

[17] This file is also cited as an example in Section 3.1.2 of the report.

writing, none was in Form 1. The police asked the OPCC to order an investigation under s. 55(3) of the *Police Act*. The OPCC wrote back suggesting that someone in the Department would have to complete a Form 1 in order for the OPCC to process the complaint because the *Police Act* does not appear to permit the Police Complaint Commissioner (the "Commissioner") to order investigations into service or policy complaints.

There was an indication from a few files we reviewed that the OPCC and some of the Departments appear to believe that in some cases it may be appropriate to refuse to accept for lodging, or to treat as incapable of lodging, certain complaints that on their face appear to comply with the basic formality requirement of completing and lodging a Form 1 under the *Police Act*. For example:

- File example #6: A stale complaint that was similar or identical to other complaints (previously summarily dismissed) by the same Complainant, alleging that the police were breaking into or otherwise tampering with his vehicle. The OPCC refused to characterize the complaint, thereby refusing to accept it for lodging.

In our view, the *Police Act* requires that if a Form 1 is completed it must be accepted for lodging under the *Police Act*. If the complaint is invalid or baseless on its face, then it ought to be dealt with by summary dismissal. The mandatory requirements of the *Police Act* should not be circumvented by refusing to accept for lodging complaints that on their face meet the formality requirements under the *Police Act*.

3.3 SECTION 52.1

The requirement under the *Police Act* that all complaints be characterized either as public trust, internal discipline, or service and policy, seems to us to be an unnecessary step that gives rise to delay and paperwork and does not serve to advance or expedite the process of handling complaints.

Of the public complaint files we reviewed, only a few did not fall squarely into the category of public trust, as that is defined under the *Police Act*. In our view all complaints from the public should be presumptively characterized as public trust, subject to the Discipline Authority convincing the Commissioner that this characterization would be inappropriate in any particular case. The *Police Act* should also require that, instead of spending time and energy on the largely fruitless process of characterizing complaints, the Discipline Authority should be required to provide particulars of the complaint, including the category of public trust default alleged and some factual particulars of the impugned police conduct. In our view this would help to encourage better, more timely, and more complete investigations.[18]

3.4 SECTION 52.2

Although duress is one obvious ground for scrutinizing withdrawn complaints, it ought not to be the only focus of the Commissioner's attention. We saw no withdrawn complaints in which duress was a significant issue. But we did see several withdrawn complaints that, for other reasons, may have merited closer scrutiny than they received from the OPCC. The OPCC's powers to deal with withdrawn complaints should be clarified and possibly expanded.

These are examples of cases where issues other than duress arose with respect to withdrawn complaints:

- File example #7: The Complainant alleged that while handcuffed and not resisting arrest he was pepper sprayed and assaulted. The incident that gave rise to the complaint also gave rise to charges against the Complainant of assaulting and obstructing a peace officer and causing a disturbance. The Respondent had had several other complaints of excessive force or abuse of authority made against him. He became involved in plea negotiations between Crown and defence counsel which resulted in the criminal charges against the Complainant being stayed in return for the Complainant agreeing to withdraw his complaint under the *Police Act*. This appeared to us to amount to a possible abuse of the police complaint process.[19]

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[18] We discuss the issues of characterization and particularization in more detail below.

- File example #8: The Respondent initiated an investigation of his cousin for prohibited driving, which ended in his having a physical struggle with his aunt (the Complainant), who had attempted to stop the Respondent from arresting her son. The aunt ultimately agreed to withdraw her complaint but only on the condition that, after withdrawal, the Respondent would meet her, face to face, to discuss what had occurred. After withdrawal, the Respondent refused to participate in a meeting with his aunt.
- File example #9: This was a complaint initiated by the Organized Crime Agency ("OCABC") about an officer improperly requesting criminal records checks for personal reasons through an OCABC research analyst. The Form 1 was internally generated and then internally withdrawn without the Department addressing that misuse of police databases for personal purposes constitutes a serious violation of the privacy interests that the police are obliged to protect.

3.5 SECTION 54

We had concerns about a significant number of the complaints that had been summarily dismissed. Particularly in some Departments we found that the power to dismiss complaints summarily was misunderstood, misapplied, or abused. The problems with summary dismissal may stem, at least in part, from the ambiguous language of s. 54(1) of the *Police Act*. On the one hand, this provision would seem to permit Departments to weed out complaints that, on their face, are obviously devoid of merit or unworthy of consideration, without inquiring into their merits. On the other hand, the reference in paragraph (b) to "further investigation" seems to require that some degree of initial investigation must be conducted before a complaint can be dismissed on the ground that there would be "no reasonable likelihood" of "producing evidence of a public trust default." It is unclear what form the initial investigation must take or how extensive it must be. In some Departments, paragraph (b) seemed to be used as a justification for carrying out partial investigations, selectively focussed on dismissing complaints.

In our view, the summary dismissal provisions should be clarified. It might also be appropriate to include additional grounds for summary dismissal, such as:

- another Act or process exists to deal with the substance of the complaint; and
- the complaint is predominantly an issue internal to the Department or is made in order to advance an internal or civil dispute that might be better dealt with through, for example, grievance arbitration.

3.6 OTHER STATUTORY ISSUES

- Where no public complaint has been made and no Form 1 has been lodged, some Departments take the view that the *Police Act* requires there to be an order from the Commissioner under s. 55(3) before a Discipline Authority can commence an investigation into a possible discipline default.[20] It is unclear whether this is a correct interpretation of the *Police Act*, given that s. 64(5) specifically permits the Discipline Authority to "deal with" a discipline default as an internal discipline matter where, among other things, no Form 1 has been lodged. If it is a correct interpretation of the *Police Act*, however, the question arises whether it unduly restricts the power of a Discipline Authority to investigate possible police misconduct.

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[19] This file is also cited as an example in section 13.6 of the report.

- When complaints are found to be unsubstantiated, should some other recourse, short of a full public hearing, be available to an aggrieved Complainant or to the Commissioner? We saw numerous files in which the Complainant, sometimes quite justifiably, was dissatisfied with the investigation or the findings in relation to his complaint but the OPCC could not do anything to address this dissatisfaction because of the seemingly high threshold for ordering a public hearing. Perhaps, as seems to be the view of Departments and the OPCC, public hearings are something to be avoided.[21] If so, then some other more efficient or expeditious means should be put in place for routinely dealing with complaints, the handling of which by police, though not egregious, may have left questions unanswered or concerns unaddressed.
- Section 55.2 of the *Police Act* provides that a person employed by the Department out of which a complaint arises may be appointed as investigating officer but does not appear to require the appointment of an investigating officer to investigate complaints that are lodged and not summarily dismissed or informally resolved. Based on the definition of "investigating officer" under s. 46, the apparently mandatory obligations placed upon the investigating officer under s. 56(6), and the fact that the investigating officer and the Discipline Authority are clearly intended to be two different people with distinct responsibilities, this is probably a legislative gap. It could be remedied by revising s. 55(1) so that the words "initiate an investigation into" be removed and replaced with "appoint an investigating officer to investigate".
- The *Police Act* should more clearly delineate and distinguish between the role of investigating officer ("investigator") and the role of Discipline Authority.[22] The requirement in s. 56(6) that the Investigator formulate "findings, conclusions, [and] recommendations" tends to cloud the distinction between the Investigator and the Discipline Authority, and permits the Discipline Authority to avoid, or entirely abdicate, the responsibility for determining whether a complaint is substantiated and whether to impose correction or discipline. This in turn can lead to the perception or the reality that the Investigator, motivated towards justifying certain findings, conclusions, or recommendations, might conduct an investigation that is less than completely objective.
- Section 56(7) requires that investigations into public trust complaints must be completed within 6 months of the lodging of the complaint. This seemingly clear deadline is made obscure by s. 56(8), which provides that "an investigation is completed when the discipline authority has reviewed the final investigation report … and has determined what course of action to follow." The clause "determined what course of action to follow" is probably intended to refer to the Discipline

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[20] File example #10: The Respondent, while off duty, allegedly assaulted a man whom the Respondent discovered was having an affair with his wife. The victim did not wish to proceed with a complaint or any action against the officer and took full responsibility for what happened. The DA felt constrained from commencing his own investigation into the matter so he requested the OPCC to order one under s. 55(3). This file is also cited as an example in Sections 14 and 15 of the report.

[21] It is not at all clear to us that this was the Legislature's intention in passing s. 60 of the *Police Act*. Public accountability appears to be one of the primary purposes of the *Police Act* and public hearings are one of the primary means of effecting that purpose. It may be that the manner in which some of the high-profile public hearings into police conduct have been conducted in this province provides a disincentive for ordering public hearings but authorities in other jurisdictions, the Law Enforcement Review Board in Alberta for example, seem to be able to hold regular and relatively expeditious public hearings.

[22] This issue will be discussed in more detail below.

Authority's determination under s. 57.1 of whether the evidence in the final investigation report is "sufficient to warrant the imposition of disciplinary or corrective measures." If so, this should be clarified.

- The power of the Discipline Authority to offer the Respondent a prehearing conference ought to be removed from the *Police Act* or its scope ought to be limited and clarified. In a number of cases we saw what appeared to be reasonable suggestions for proposed discipline reduced in severity after a prehearing conference, without any reason or explanation for the reduction. There were also several cases in which the Discipline Authority offered a prehearing conference and reduced the proposed discipline even though, in our view, the discipline default was too serious to qualify for a prehearing conference and the ultimate discipline agreed upon was unreasonably lenient. If the process of offering prehearing conferences and reducing proposed discipline is to be permitted to continue, particularly in the case of serious defaults, it ought to be more open to public scrutiny and oversight by the OPCC.
- The *Police Act* ought to permit the Discipline Authority to impose a higher level of disciplinary or corrective measure, perhaps up to and including a brief suspension without pay, without the Respondent being able to demand a full public hearing. For less serious defaults where less serious discipline is appropriate, a "paper" hearing on a relatively tight timeline ought to replace the recourse to a full public hearing under the *Police Act*.
- "Managerial advice" or "advice as to future conduct" is not included within the range of corrective or disciplinary measures provided for under the *Police Act* and the *Code of Conduct*. Nevertheless, on the files we reviewed, this "informal discipline" was imposed by Discipline Authorities far more frequently than any other type of corrective or disciplinary action. This "informal discipline" ought to be specifically regulated, or prohibited, under the *Police Act* and the *Code of Conduct*.
- The *Code of Conduct* ought to be amended to include a mandatory duty to report another officer who has committed a discipline default.
- The *Code of Conduct* ought to be amended to include, as a specified discipline default, a police officer's failure or refusal to cooperate fully with a *Police Act* investigation.
- Section 17 of the *Code of Conduct*, which deals with the "mental element" for disciplinary default, is confusing. It appears to import criminal law terms into an administrative or disciplinary context, in which the burden of proof is based on the civil standard.

4 NON-LODGED COMPLAINTS

Section 52(4) of the *Police Act* stipulates that a complaint may initially be submitted orally or in writing but, before the complaint may be processed under the *Police Act*, the complaint must be committed to writing in the prescribed form and the complaint must be lodged with one of the persons referred to in s. 52(2). These formality requirements have led, perhaps unintentionally, to the creation of a category of non-lodged complaints that fall outside the strict requirements of the *Police Act*. From our review, it was apparent that, even when a Complainant provided a signed statement or letter setting out a complaint, most Departments would not process it under the *Police Act* unless the Complainant also completed and signed a Form 1.

The handling of non-lodged complaints varied from Department to Department. Some simply accepted them as formal complaints, or attached them to a prescribed form and deemed them to be formal complaints.[23] Others did not deal with them unless they were written and lodged in the prescribed form. Most Departments often carried out some degree of investigation, even when the complaints were very informal, but the investigations into non-lodged complaints tended to be less thorough and sometimes less timely. In dealing with non-lodged complaints, the Departments generally did not provide the level of notice or reporting to the Complainants or the OPCC that they would have been required to provide if the complaints had been formally lodged under the *Police Act*.

One file we reviewed contained a letter from an OPCC Analyst suggesting that the OPCC's policy is that a written and signed complaint should be deemed to be lodged under the *Police Act* regardless of whether a Form 1 is actually completed and lodged. This approach makes sense but does not appear to have been systematically followed by Departments or enforced by the OPCC subsequently.

Most of the 105 non-lodged complaints we reviewed were made by telephone, in person, or by letter. Although s. 52(5) of the *Police Act* requires a person receiving a complaint to assist the Complainant in completing a record of complaint in the prescribed form, few of the records of non-lodged complaints that we reviewed documented any significant efforts by complaint takers to assist the Complainant in completing a Form 1, particularly when complaints were made orally.[24] Written complaints were often followed up with advice from the Department about the process of lodging a formal complaint but, for whatever reason, Complainants did not usually pursue the matter further. In one Department almost all non-lodged complaint files contained a copy of a letter acknowledging receipt of the complaint and containing "boiler plate" language stating that the complaint would be dealt with under the *Police Act* but in most cases there was no evidence that this was actually done.

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[23] In one Department, upon the receipt of a letter complaint, the DA completes a Form 1, attaches a copy of the letter, and indicates that the signature of the Complainant appears on the appended letter of complaint. The matter is then dealt with as a lodged complaint under the *Police Act* without further inconveniencing the Complainant whose letter clearly manifested an intention to lodge a complaint against the police.

[24] One Department's policy stipulates that when a person makes a complaint to the on duty NCO that cannot initially be resolved informally the person complaining must to be advised to submit the complaint in writing to the Chief Constable or the OPCC. The language of the policy suggests a process that is designed to discourage complaints based on bureaucracy.

Of the non-lodged complaints we reviewed, the large majority alleged clear discipline defaults, some of them quite serious, but they were not formally processed under the *Police Act*. Some Departments investigated non-lodged complaints up to a point (but no further) where the Discipline Authority could justify dismissing the complaint. Others took no apparent action in response to non-lodged complaints and appeared to place on file any documents received or generated as a result of a non-lodged complaint. The OPCC was rarely informed of the existence or the manner of resolution of non-lodged complaints from any of the Departments.

These are examples of the types of allegations made in non-lodged complaint files that we reviewed:

- Non-Lodged complaint file example #1: Spousal Assault victim alleged that police or EHS had failed to provide her with medical attention that she believed she ought to have received.
- Non-lodged complaint file example #2: Complainant was stopped by police for speeding, and questioned about impaired driving and the smell of marihuana in his car; his vehicle was allegedly searched for drugs without consent.
- Non-lodged complaint file exampe #3: Complainant's son was in a crosswalk and a passing car grazed his hand. The police allegedly neglected their duty by failing to investigate or pursue the matter.
- Non-lodged complaint file example #4: Complainant alleged that while walking his dogs three officers on bicycles pushed him into the bushes and issued him two tickets for having unlicensed dogs off leash.
- Non-lodged complaint file example #5: An officer allegedly provided confidential CPIC information to a newspaper reporter relating to an ongoing investigation.
- Non-lodged complaint file example #6: Complainant alleged that the police had broken down the door and used a "stun gun" on him inside his girlfriend's apartment.
- Non-lodged complaint file example #7: Complainant alleged that he was lodged into cells and his necklace was lost or stolen.
- Non-lodged complaint file example #8: Complainant alleged that police attended his home and unjustifiably questioned him about sexual assault or sexual harassment. He felt police were "accusing, threatening and menacing" and that they had improperly threatened to charge him criminally if he did not re-pay a damage deposit to a previous tenant.
- Non-lodged complaint file example #9: Complainant alleged that he was arrested for no reason while walking to the store and advised by police that he had no rights.
- Non-lodged complaint file example #10: Complainant was stopped by police and allegedly directed from his vehicle, handcuffed, and pushed face-first into his van. The Complainant also alleged that the police officer used profanity and acted unprofessionally.
- Non-lodged complaint file example #11: Complainant was stopped for speeding. He was directed from his vehicle, physically searched and his vehicle was searched. The Complainant alleged that the police did not have grounds for the searches.
- Non-lodged complaint file example #12: Complainant alleged that he was thrown over the hood of a police car and pepper sprayed for no reason.

- Non-lodged complaint file example #13: Complainant alleged that the police watched an individual break into her house and steal an expensive camera and failed to immediately arrest the individual and recover her property. The suspect was eventually arrested but the property was never recovered.
- Non-lodged complaint file example #14: A lawyer wrote to police complaining that his client alleged that four officers had pushed their way into his home, handcuffed him, trashed his house while searching it and left without explanation or legal justification. He also alleged that $3,200 cash was missing after the police departed.

5 CHARACTERIZATION

Section 52.1 requires the Discipline Authority to characterize a lodged complaint as public trust, internal discipline, or service or policy, and send a notice of the decision on characterization to the Commissioner for his review and approval. The Commissioner must then notify the Discipline Authority, the Complainant, and the Respondent of the final decision on characterization.

From our review, it became apparent that the process of characterization of complaints was time consuming and labour intensive without providing commensurate value to the complaint process. The large majority of the complaints we reviewed clearly fell into the public trust category. Therefore it seemed to us that it would be more appropriate that complaints from the public should be presumptively characterized as public trust, unless the circumstances clearly dictated a different characterization.

In the course of our review we saw examples from some Departments in which the initial effort to characterize the complaint also involved some effort to particularize it, by specifying the type of discipline default alleged, the basic facts from the complaint that supported the allegation, and, if there was more than one Respondent, the particular allegations made against each respective Respondent. In virtually every case that they were attempted, such initial attempts at particularization resulted in investigations that were more focused and more complete.

In our view in order to make the initial process of opening a public trust complaint file more meaningful, the *Police Act* should require that upon receipt of a complaint, the Discipline Authority must particularize it by specifically identifying the variety of discipline default alleged and the specific facts alleged in the complaint that are said to give rise to the default. Where there is more than one Respondent, the defaults against each of them should be particularized in this way. These particulars should be set out in a notice that is sent to the Complainant, the Respondent, and the OPCC.[25]

These are some examples demonstrating the value of particularizing complaints:

- File example #11: The Complainant was attempting to make a lane change but one driver would not let him into his lane. The Complainant gave "the finger" to that driver, who turned out to be an off duty police officer. The off duty police officer then stopped the Complainant, took his driver's licence and registration, and directed the Complainant to attend the police office to pick up his identification, along with a violation ticket. Clarity about the actual nature of the allegation was lacking. The complaint was classified as "off duty conduct" but it was unclear what aspect of the conduct the Complainant was complaining about: the issuance of the ticket while the officer was off duty; the taking of his driver's license and registration; the direction to attend the police office to pick up his ticket and identification; the officer's attitude; or, the apparent conflict between personal and professional life which, if proved, could have amounted to abuse of authority.

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[25] Some Departments are already doing this to some extent by providing a "Summary of Incident" along with the characterization. This preliminary step serves to ensure that the concerns of the Complainant are clearly articulated and understood at the outset, which is the first step to ensuring that the Department can address the Complainant's concerns.

- File example #12: The police were called to attend a domestic dispute, which gave rise to a complaint about various aspects of their conduct. After receiving the complaint, the Investigator wrote to the Complainant, confirming and re-stating her complaint as follows: "You complained that Constables [X] and [Y] attended [address] on [date]. While there, the constables kept you out of the suite for 2 ½ hours, they kept your bank cheque, and intimidated you in front of other people in the building." This went beyond alleging "abuse of authority" and pared down a somewhat rambling complaint into a clearer, more manageable case, which in turn led to an investigation that clearly articulated and addressed the Complainant's concerns.
- File example #13: The two Complainants (a couple) had been at the residence of an acquaintance, drinking. When the male Complainant briefly left the residence, the acquaintance locked the door, turned out the lights, and tried to sexually assault the female Complainant. The male Complainant became frantic and forced his way back into the residence, allegedly committing a minor assault on the acquaintance's brother. When police attended, they directed the irate male Complainant to leave the residence. When he failed to do so, a struggle ensued and the male Complainant was arrested. The Complainants' written complaints set out various allegations of misconduct, including excessive force in the arrest of the male Complainant, neglect of duty in failing to investigate the sexual assault, assault of the female Complainant by pushing her with a baton, and conflict of interest in that the attending investigating officer sometimes employed the alleged sexual assaulter. To the dissatisfaction of the Complainants, the investigative report focussed narrowly on the first two issues of abuse of authority and neglect of duty, without addressing the allegation of assault of the female Complainant and the alleged conflict of interest of the Respondent. The file would have benefited from a clearer framing or particularization of the issues at the outset.

6 SUMMARY DISMISSAL

Our review revealed that there were considerable variations among Departments in their interpretation of the *Police Act* and the correct procedures for complying with it. Some of the unique procedures developed by some Departments, in our view, could have the potential of leading to dissatisfaction and an erosion of public confidence in the ability of police officers to conduct full, fair, and objective investigations into alleged police misconduct. This was particularly true of some Departments' interpretation and application of the summary dismissal provisions contained in s. 54(1) of the *Police Act*.

Section 54(1) of the *Police Act* provides that a Discipline Authority may summarily dismiss a complaint if:

(a) The complaint is frivolous or vexatious;[26]

(b) There is no likelihood that further investigation would produce evidence of a public trust default; or

(c) The complaint concerns an act or omission that, to the knowledge of the Complainant or third party Complainant, occurred more than 12 months before the complaint was made.

As we have already suggested above, this section seems to be inherently ambiguous. On the one hand it seems to permit Departments to weed out complaints, without inquiring into their merits, if they are obviously devoid of merit or unworthy of consideration. On the other hand, the reference in paragraph (b) to "further investigation" seems to require that some degree of investigation must be conducted before a complaint can be dismissed on the ground that there would be "no reasonable likelihood" of "producing evidence of a public trust default." It is unclear what form the initial investigation must take or how extensive it must be. In some instances, paragraph (b) seemed to be used as a justification for carrying out partial investigations, selectively focussed on dismissing complaints.

The OPCC has issued a Practice Directive on Summary Dismissal but it does not help to remove the uncertainty about the proper use of summary dismissal. It states that s. 54 is not meant to preclude an investigation but it goes on to say that the complaint must be determined "on its face" to fall into one of the categories suitable for termination. The Practice Directive says that a file review may present sufficient documentation to show that the allegation is "unfounded" and goes on to suggest that supporting documentation may be necessary to support a "finding" relating to summary dismissal. In our view, summary dismissal should not involve a "finding" or a conclusion that the complaint is "unfounded" on the merits. It should merely involve the Discipline Authority being "satisfied" that the complaint falls into one of the three categories described in

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[26] It is important to point out that we saw no examples of misuse or abuse of s 54(1)(a) of the *Police Act*. The problems we saw almost invariably involved s. 54(1)(b) of the *Police Act*.

s. 54(1) and, as such, will not result in further investigation by the police. The OPCC's Practice Directive seems to confuse summary dismissal with a "finding" or "determination" on the merits.

In our view, the summary dismissal provisions are predominantly intended for use in the preliminary stages of complaint handling, prior to taking significant investigative steps, such as interviewing witnesses and taking duty reports from Respondent officers. Once the investigation has progressed beyond a preliminary stage, the Discipline Authority should be compelled to make a decision on the merits of the complaint. Neither the *Police Act* nor the OPCC's Practice Directive makes this clear.

For the purposes of our review, we assumed that a complaint should not be summarily dismissed under s. 54(1)(b) if, either on its face or after a very preliminary investigation or file review, it disclosed an allegation, or facts that could reasonably support an allegation, of a public trust default. If a complaint met this test then, in our view, it justified a full investigation and a determination of whether it was substantiated on the merits. For example if the complaint was reasonably capable of belief, even if it was not particularly credible in itself or was less credible than other information on file, or if there was a significant dispute or disagreement between the Complainant and the Respondent about the conduct giving rise to the complaint, then in our view summary dismissal was not appropriate. In our view, the more evidence or information that was available (or that might become available through further investigation) to support the Complainant's version of events, the less appropriate summary dismissal was.

To determine whether summary dismissal is appropriate, we thought it might be useful to refer to the following guidelines:

- File review is a form of investigation;
- Depending on the case, file review alone may justify summarily dismissing a complaint or in some cases it may even justify making a determination on the merits of the complaint;
- Where a finding on the merits can be made on the existing evidence then summary dismissal should not be employed;
- Summary dismissal should not be used as a means of avoiding an investigation or a final determination in circumstances were either or both are warranted;
- Where a dispute exists in the evidence and the Discipline Authority is prepared to resolve that dispute one way or another, then summary dismissal should not be employed;
- Summary dismissal should normally arise only in the preliminary stages of complaint assessment or investigation but there may be rare cases where it could be utilized later in the process of investigating or addressing a public trust complaint; and
- If there is another statute or process that allows for the subject matter of the complaint to be dealt with fully and completely then summary dismissal should be used and the complaint should be directed to that process.

6.1 INCONSISTENCIES AMONG DEPARTMENTS IN THE USE OF SUMMARY DISMISSAL

Of the public trust complaints in the main sample, 85 (or roughly 28%) had been summarily dismissed. There was great variation among the Departments in the rate at which they summarily dismissed complaints. Resort to it by the respective Departments, ranged from zero to 75% of their public trust complaints in the main sample. One department summarily dismissed about 58% of its public trust complaints in the main sample.

When the figures for this Department were removed, it turned out that approximately 23% of the public trust complaints in the main sample had been summarily dismissed.

In some cases we felt that the power to summarily dismiss was being ignored or used too sparingly.[27] In our view it could have been used to dismiss a number of complaints at an earlier stage.[28]

In other cases that had been summarily dismissed, we felt that there was enough information on file or there had been a thorough enough investigation to justify a finding that the complaint was unsubstantiated on its merits.[29]

In the case of many complaints it was our view that summary dismissal was inappropriate and that a full investigation ought to have been carried out. These are some examples: [30]

- File example #23: This was a complaint of unlawful arrest and excessive force both at the scene of an arrest and at the booking area of the police station. A number of serious allegations were not investigated or addressed. The bulk of the investigation involved obtaining the video of the booking area and confronting the Complainant with discrepancies between his account and the video. When the Complainant suggested that the Investigator should "get rid" of the complaint, the Investigator processed it as a summary dismissal, without inquiring at all into the allegations of misconduct at the scene of the arrest.
- File example #24: The Complainant was arrested and charged with obstruction after he suggested that a police officer had no right to issue a traffic ticket to a cyclist. The charges were ultimately stayed by Crown counsel. The Complainant's allegation that an officer had made a false statement in the Report to Crown counsel was summarily dismissed after a partial investigation that failed to address the main issues raised in the complaint.
- File example #25: The Complainant alleged that the police had been biased and wrongly relied on his past criminal record instead of the actual facts in their investigation of him. He also alleged that the Respondent failed to act professionally, referring to him as an "idiot" and an "asshole". Although the Respondent specifically admitted having told the Complainant to "quit being an asshole", the Discipline Authority determined that the Respondent had acted appropriately and summarily dismissed the complaint.

6.2 SUMMARY DISMISSAL VERSUS FINAL DETERMINATION

Confusion about the difference between summary dismissal and a final determination on the merits seemed to affect a number of the complaint files we reviewed. The distinction is significant because the recourse available to a Complainant differs depending on whether the complaint is summarily dismissed under s. 54 or a determination is made under s. 57.1.[11]

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[27] For example:

- File example #14: The Complainant alleged that police failed to become involved in a civil dispute with his brother concerning the care of their sick mother. This is a case which could have been dealt with by summary dismissal but was not. The OPCC essentially "deemed" it to have been informally resolved so that it could close its file.
- File example #15: The Complainant claimed to be a "seer" who was concerned that police would not take into account her information about an ongoing homicide investigation and also that an unidentified police officer had tampered with a file relating to her provision of information to crime stoppers. The matter was dismissed as unsubstantiated but probably should have been summarily dismissed.

[28] In an email on one file we reviewed, a Deputy Chief Constable described the complaint as the "penultimate confirmation" that the *Police Act* should be amended to screen out "nonsensical, idiotic and frivolous complaints." This obviously reflects a lack of familiarity with or misunderstanding of the proper scope of s. 54(1), which would seem to be aimed at screening out precisely those types of complaints.

[29] File examples #16, 17, 18, 19, 20, 21 and 22.

[30] More examples of inappropriate summary dismissals appear below under other specific topics.

We saw a number of files, from a variety of Departments, in which complaints were summarily dismissed on the basis that there was no reasonable likelihood that further investigation would produce evidence of a public trust default but in which the Investigators or Discipline Authorities also implied or directly asserted that the complaint was unfounded on its merits, even though a full investigation had not been undertaken. For example:

- File example #26: This complaint of abuse of authority involved an allegation that an officer had sworn at and possibly discriminated against a First Nations driver. The Discipline Authority found the complaint to be "unsubstantiated" but then went on to state: "pursuant to section 54 of the B.C. *Police Act*, the discipline authority is satisfied that there is no reasonable likelihood that further investigation would produce evidence of a public trust default and has therefore decided to conclude your complaint." To make matters even more confusing, the Investigator apparently admitted to the Complainant that the Respondent could have acted more professionally and that the Respondent had received managerial advice as a result of his conduct. Then, after the Commissioner questioned whether it was really appropriate in the circumstances to say that the complaint had been unsubstantiated, the Discipline Authority re-classified the complaint as, in part, substantiated and concluded that "management advice could stand as a sufficient resolution" to the complaint.[12]
- File example #27: This was one of a number of files in which the Discipline Authority determined the complaint to be "unsubstantiated" (based on a review of the relevant facts obtained through an investigation) but also "summarily dismissed" the complaint.[13]
- File example #28: The Complainant alleged that the police had used excessive force in arresting his neighbour and that when he had attended the police station to complain two police officers had attempted to dissuade him from of making a complaint. Although he summarily dismissed the complaint, the Discipline Authority went on to state that he felt the Respondents had acted appropriately in arresting the neighbour and in attempting to informally resolve the complaint. This gives the impression that the Discipline Authority made a finding as opposed to summarily dismissing the complaint. Given the divergence in the respective versions of events, and the possibility that other witnesses (not interviewed) might have corroborated the complaint, this was likely inappropriate.[14]

6.3 INAPPROPRIATE INVESTIGATORS' COMMENTS

On some of the complaint files that had been summarily dismissed, we saw emails and correspondence in which the Investigator appeared to evince a predisposition toward collecting just enough information to justify summary dismissal or made other inappropriate comments about complaints or Complainants. This could reasonably create a perception that the Investigators, and their Departments, did not take public complaints seriously or were using summary dismissal as a way of avoiding having to deal with complaints on their merits. The majority of these complaints did not fall under the definition of frivolous or vexatious but alleged serious misconduct requiring investigation in order to establish the facts. These are some examples:

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[11] After summary dismissal the Complainant is entitled to apply for a review by the Commissioner, who may order the Department to investigate the complaint if he concludes that it is in the public interest to do so. After a determination under Section 57.1 the Complainant is entitled to request the Commissioner to order a public hearing into the complaint.

[12] This file is also cited as an example in Section 15 of the report.

[13] Since this and other similar files from this Department involved thorough investigation and reviews of the relevant facts, the use of s. 54 appeared more likely to be the result of a misunderstanding about which section of the *Police Act* applied, rather than a misuse of the summary dismissal provisions.

[14] This file is also cited as an example in Sections 8.3, 12 and 13.4 of the report.

- File example #29: This file contained an email from the Investigator advising a Respondent officer that a Form 1 had been lodged and that he anticipated being able to summarily dismiss the complaint down the road.
- File example #30: The day after the Form 1 was lodged the Investigator sent an email to the Respondents notifying them of the complaint. The email is titled "Don't shoot the Internal Guy" and suggests that the Complainant has concerns about the police seizing "his B&E (I mean bike) tools". The email goes on to say that the Investigator may require a bit more information prior to dismissal. Another email sent to a clerical support person on the same day says that the complaint will be dismissed so there is no need to worry about follow up letters.[35]
- File example #31: This was the second of two complaints relating to a serious allegation of excessive force and deceit by police officers who had arrested the Complainant's friend. The first complaint had been summarily dismissed. The second complaint was filed after the Complainant learned the names of two independent witnesses who corroborated his version of events. Before conducting an investigation into the second complaint, the Investigator sent an email to the Respondent stating "I will be dismissing this also but unfortunately you have to be served." The Investigator then followed through on his promise, concluding the second complaint without taking any steps to deal with clear evidence of an assault and the alleged cover up by the arresting officers made by the complainant.[36]

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[35] This file is also cited as an example in Sections 8.2, 12 and 13.4 of the report.

[36] This file is also cited as an example in Sections 8.2, 8.4, 9 and 12 of the report.

7 INFORMAL RESOLUTION

Section 54.1(1) of the *Police Act* requires the Discipline Authority "promptly after receiving a public trust complaint ... [to] determine whether an informal resolution of the complaint is appropriate." In a few Departments, generally those in which the Chief Constable retained the Discipline Authority role, there were obvious indications on files that the Discipline Authorities were suggesting, recommending, or directing that Investigators or supervisors pursue informal resolution of complaints at an early stage. These indications came in the form of memos, emails, or handwritten notes on files. In most Departments, however, we saw no clear evidence on the files that Discipline Authorities systematically considered and determined whether informal resolution was appropriate. This meant that in most Departments there was no clear evidence of compliance with the mandatory provisions of s. 54.1(1).

This apparent failure to consider the appropriateness of informal resolution seems to have translated into very few informal resolutions of complaints in our sample. With one exception, the Departments did not appear to pursue the option of informal resolution under the *Police Act* with any vigour. Of the public trust complaints in the main sample, there were only 25 that were informally resolved.[17]

7.1 "INFORMAL RESOLUTION" LEADING TO WITHDRAWAL

A number of complaint files that started out as attempts at informal resolution ended up being withdrawn by the Complainant. In these cases it appeared that the Respondent, or his supervisor, had "spoken to" or "discussed the matter with" the Complainant and, evidently, made some informal efforts to address the substance of the complaint. Because of the level of informality involved, it is difficult to say whether there is anything inappropriate about the way these files were concluded. For example:

- File example #32: A homeless person alleged that he was approached by police officers who were disrespectful to him, subjecting him to verbal and physical abuse. He said that one officer called him a "sack of shit". The supervisor of the Respondents agreed to "speak with" the officers and in return the Complainant agreed to withdraw his complaint.
- File example #33: The Complainant alleged that the police had failed to protect his privacy by inappropriately providing his name to a third party and that the Respondent officer was condescending in an email. Notes on file suggest that the Investigator entered into discussions with the Complainant about resolving the matter, which resulted in the Complainant withdrawing the complaint.

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[17] Fifteen of these originated from a single Department and in a number of cases, for reasons that will be referred to below, the "informal resolutions" may have been inappropriate.

7.2 "INFORMAL RESOLUTION" OF UNSUBSTANTIATED COMPLAINTS

In several cases, during the course of the investigation, the substance of the complaint was actually addressed in a manner that resembled informal resolution but then the complaint itself was found to be unsubstantiated. These are some examples:

- File example #34: The Complainant, who suffers from mental health issues, alleged that the Respondent had been rude, condescending, and lacked experience or training in how to deal properly with people suffering from mental health disorders. Apparently at the instigation of the Investigator, the Respondent officer said he was sorry the Complainant felt the way he did and "wanted to rectify the situation somehow" so he agreed to take training. Since the Complainant was "very satisfied" with this, the complaint was held to be unsubstantiated.[38]
- File example #35: The Complainants were a couple transporting their seriously brain-injured child home from the hospital. Travel was very painful for the child and the parents had a letter from their doctor explaining this. The Complainants alleged that in their haste to catch a ferry and because of unfamiliarity with traffic patterns, they mistakenly crossed a solid line. The Respondent stopped them and, despite their circumstances, explanations, and statements of regret, issued them a violation ticket, which in turn caused them to miss their ferry, thereby adding to their child's pain and suffering. The Complainants alleged that the Respondent had been rude and may also have mouthed offensive language. Although the complaint was ultimately found to be unsubstantiated, the Investigator undertook a form of "resolution", arranging to have the violation ticket and fine expunged and refunded on "humanitarian grounds".[39]
- File example #36: The Complainant was arrested for stealing a bait car. His jacket was left in the car and subsequently stolen after he was arrested. His complaint was that police had failed to seize and lodge his jacket upon his arrest. Although his complaint was ultimately found to be unsubstantiated, the Investigator took significant steps to arrange for reimbursement for the cost of the jacket.

7.3 NON-COMPLIANCE WITH S. 54.2

There appeared to be some hesitancy on the part of Respondent officers to take part in the process of informal resolution under the *Police Act*. Although it is difficult to say for sure, this may be because of the requirement under s. 54.2(1) that both the Complainant and Respondent "sign a letter consenting to the resolution of the complaint in the manner set out in the letter." It appears that this may be perceived as a form of acknowledgement that the complaint has some merit, which many Respondent officers seem unable or unwilling to accept.

Sometimes Departments dealt with the requirements of s 54.2(1) by circumventing them in a manner that appears to have undermined the purpose and intent of informal resolution. In some cases,[40] this involved treating a complaint as informally resolved even though no written consent letter had been prepared or, if prepared, it had not been signed by both the Complainant and Respondent.

We saw a more troubling method of apparently circumventing the statutory requirements for informal resolution on several files from one Department. At this department the Investigator, or another senior officer assigned to pursue informal resolution, would endorse the consent form with a statement that did little more than to restate the complaint and the Complainant's view that the conduct of the Respondent had been improper. The Complainant and the Respondent would then both sign the consent form, without there having been any recognition of the validity of the complaint or the need for the Respondent officer to remedy his conduct. For example:

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[38] This file is also cited as an example in Section 14 of the report.

[39] The file is also cited as an example in Sections 13.6 and 14 of the report.

[40] File examples #37 and #38.

- File example #39: The Complainant had been a bystander to a fight outside a bar. Police arrived as the fight was breaking up and told everyone to leave. When the Complainant - who had not been involved in the fight - asked why he had to leave, the Respondent officer used the "F" expletive several times and made a comment to the Complainant implying that he was a homosexual. The Respondent's supervisor got the Complainant to sign a consent letter endorsed with the following statement:

  > I [the Complainant] have spoken to [the Respondent's supervisor] on [date] having felt that Cst. [the Respondent] had used inappropriate language toward me on [date]. I am satisfied now that this matter can now be resolved and concluded.

  Being nothing more than a repetition or restatement of the complaint, this amounts to no resolution at all for the Complainant and a lack of any real accountability by the Respondent.

- File example #40: As the Respondent officer was driving by, he heard the Complainant say "look it's the piggers." The Respondent stopped, called the Complainant a "f***ing sleazebag", arrested him, handcuffed him, placed him in the back of his police vehicle and drove off. After questioning the Complainant, the Respondent told the Complainant he "could have" arrested him for causing a disturbance, but he released the Complainant, then refused to provide the Complainant with his name, a business card, or a pen with which to write down the Respondent's police ID number. The Complainant was not opposed to informal resolution but wanted an apology from the Respondent. The Respondent's supervisor told the Complainant that the Respondent would not apologize but that the supervisor would do so on behalf of the Department. The supervisor then persuaded the Complainant to sign a consent letter bearing the following comment, which the supervisor signed on behalf of the Department.

  > I have discussed my complaint with Sgt. [the supervisor]. Sgt. [the supervisor] has apologized to me on behalf of the police Department for what I believe was the unprofessional conduct of the officer involved. I would have preferred to have the apology from the officer concerned. I accept this as a resolution to this complaint.

  Not only does this fail to comply with the requirements of s. 54.2(1), but it also fails address the Complainant's justifiable concerns about the Respondent's conduct. All the more troubling is that this same Respondent had been the subject of several complaints that we reviewed involving serious allegations of abuse of authority or excessive force.[41]

7.4 INAPPROPRIATE USE OF INFORMAL RESOLUTION

There were a number of files in which informal resolution had been either attempted or achieved but which in our view may have been too serious to be resolved informally and may have merited a fuller investigation. For example:

- File example #41: Police entered the Complainant's house to arrest the Complainant's friend for an alleged obstruction of justice that had just occurred outside. Police did not have a warrant and they used some degree of force to arrest the Complainant's friend and another friend who intervened. Several people were jostled, pushed or forced out of the way and dishes were broken.

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[41] This file is also cited as an example in Sections 8.6, 12 and 13.6 of the report.

Several, ultimately unsuccessful, attempts were made at informal resolution. In our opinion, given the seriousness of the alleged conduct, informal resolution would not have been appropriate.[42]

- File example #42: The Complainant, who had been involved in a motor vehicle accident while under the influence of alcohol, fled from police, causing them to initiate a police chase. He alleges that when he was arrested the police used excessive force, fracturing his ribs. The Complainant was persuaded to sign a consent form setting out a dubious informal resolution described as follows: "[The Respondent's supervisor] will speak to [the Respondent] and ensure that he understands that [the Complainant] feels that [the Respondent] was too aggressive when he dealt with him on [date] and didn't take his concerns seriously."[43]
- File example #38: The Complainant was stopped by police for "jay walking". He alleged that an officer grabbed his arm, tried to take him to the ground, and spun him into a parked car. The Complainant is epileptic and he believed that this use of force brought on a seizure.[44]
- File example #43: The Respondent was alleged to have been rude during a traffic stop in which he had issued the Complainant a ticket for speeding. When the Complainant disputed the ticket, the officer allegedly failed to provide requested disclosure and allegedly misled the court about whether in fact disclosure had been sent.
- File example #44: A Nurse at a psychiatric facility complained that a police officer had conducted an inadequate search of a prisoner, leaving him in possession of a knife, keys, and marijuana. The internal documents on file suggest that the officer received a verbal reprimand but the signed "informal resolution" form suggests that the officer received only managerial advice. Neither the Investigator nor the Discipline Authority nor the OPCC Analyst mention or account for this disparity. If in fact a verbal reprimand was imposed, the manner of resolving this complaint may have violated the officer's procedural rights relating to the imposition of discipline under the *Code of Conduct*.[45]

One informal resolution file[46] that was in our view too serious for informal resolution also saw the OPCC becoming involved as a purported "Complainant." In this case, a constable conducting an investigation into a theft from a vehicle had identified a potential suspect, who resided at a Salvation Army shelter.

The constable's two supervisors advised him that he did not have sufficient grounds for a search warrant so they would not approve his request to apply for one. Unsatisfied, the constable enlisted the support of an acting sergeant, who, along with the constable attended at the shelter and convinced the manager to unlock the door to the suspect's room. The officers entered the room and seized the stolen property and returned it to the victim of the theft. The constable then lodged a complaint against his two supervisors alleging that they had obstructed justice by interfering with his attempts to obtain a search warrant.

This complaint, which was externally investigated, resulted in a finding that the supervisors had not misconducted themselves but that the constable and the acting sergeant had. As a result, the Commissioner ordered an investigation into a public trust default.

The public trust investigation was resolved by an informal resolution, whereby the constable agreed that he would receive a written reprimand (to be expunged after two years) and the acting sergeant was directed to work under close supervision until his next annual performance review. Both officers were also required to apologize to their supervisors and distribute a statement to the other officers in the Department, the wording of which was to be approved by the Chief Constable, accepting responsibility for their actions.

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[42] This file is also cited as an example in Sections 9 and 12 of the report.

[43] This file is also cited as an example in Sections 8.6 and 12 of the report.

[44] This file is also cited as an example in Sections 7.3, 8.6 and 13.4 of the report.

[45] This file is also cited as an example in Section 15 of the report.

[46] File example #45. This file is also cited as an example in Section 12 of the report.

This informal resolution was recorded on standard forms of consent to informal resolution, which the constable and the acting sergeant signed. The OPCC Senior Investigative Analyst signed the two consent forms, apparently on behalf of the OPCC, in the spot reserved for the Complainant. The police misconduct here, disobeying a direct order then proceeding to carry out an unlawful search of a dwelling room to seize stolen property, was very serious. It fell outside the OPCC's own guidelines for informal resolution and it merited full discipline proceedings under the *Police Act*, not the semi-secretive arrangements that apply when a matter is informally resolved.[47] The public was effectively excluded from the process, in a manner that may well have been contrary to the public interest.

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[47] See s. 54.2 of the *Police Act*.

8 INVESTIGATION

Of the public trust complaints in the main sample, 146 were the subject of what were said to be full investigations. Of those, 124 were found to be unsubstantiated and 22 substantiated. The remainder were withdrawn, informally resolved, or summarily dismissed. Therefore they did not receive the same degree of investigation as those that progressed through the investigative process to a Section 57.1 (1) determination and notice.

Most of the investigations ranged from adequate to reasonably well done, with some being conducted with impressive thoroughness and objectivity. As one would expect, however, there were some investigations that did not reflect the same investigative rigour. The comments and criticisms that follow are intended to identify issues that might be of significance to the review as a whole. They are not intended to suggest that the entire investigation was flawed or unacceptable or that any further or better investigation would, apart from a few cases, necessarily have affected the outcome.

Some of the issues to be discussed under this topic are:

- Investigator selection, training, supervision and retention;
- Investigators engaged in inappropriate or unprofessional communication with Respondents creating an impression of bias and not taking complaints or the complaint process seriously;
- Investigative delay and the impact on investigations that were often left dormant for protracted periods without obtaining statements or securing evidence, some of which was time sensitive;
- Investigative rigour, including:
    - The detailed and objective search and analysis of evidence from various sources; and
    - The apparent reluctance of Investigators to re-interview Complainants, Witnesses, and Respondents in order to flesh out significant inconsistencies in the evidence;
- Full background searches on Complainants without comparable searches about Respondents, even when they had been the subject of similar allegations in the past;
- Reluctance to conduct full criminal investigations of alleged police misconduct; and
- Duty statements and the disclosure of evidence to Respondents;

8.1 INVESTIGATOR SELECTION, TRAINING, SUPERVISION AND RETENTION

Our review covered several years of investigations in all Departments, which revealed differences among investigations conducted by different Investigators under the same Discipline Authority. Although it was apparent from our review that the Investigators were usually relatively senior members of the Departments, with investigative backgrounds, it was generally unclear whether they had received any special training prior to taking on the responsibility of investigations under the *Police Act*.

The *Police Act* places a heavy burden on Investigators, not only to investigate but also to present a final investigative report to the Discipline Authority, complete with findings, conclusions, and recommendations. This requires Investigators not only to gather and organize the evidence but also to delve into weighing the evidence on the balance of probabilities, and researching the appropriate range of disciplinary or corrective measures that might be appropriate if the allegations are substantiated. This requires Investigators to have expertise in issues related to policing in a democratic society, such as public accountability, administrative procedures, natural justice, labour law, and the intricacies of the *Police Act*. Ideally, education and training should be provided before Investigators are called upon to carry out duties under the *Police Act*.[48]

There appeared to be significant turnover in Investigators, with few remaining in the position for more than two years. Some displayed admirable professionalism and fairness in their investigations, reports, and correspondence, even when challenged with difficult situations and attitudes both internally and externally. These individuals went beyond the required minimum and their extra patience and perseverance often paid off. Through cooperation and respect they gained better quality evidence, resulting in better and more comprehensive investigations.

8.2 INAPPROPRIATE OR UNPROFESSIONAL COMMUNICATIONS

We saw a few files that contained inappropriate or unprofessional correspondence or communications. In some cases there were emails or memos on file implying that the Investigators had set out to disprove or dismiss the allegations in the complaint rather than conducting full and fair investigations.[49] There were several complaint files containing correspondence between the Investigator and the Respondent, advising the Respondent that a Form 1 had been filed but suggesting that the Investigator should be able to summarily dismiss the complaint without too much difficulty. These are some examples of files containing inappropriate or unprofessional communications:[50]

- File example #46: This was a complaint of excessive force used on a sixteen year old. In the preliminary meeting with the youth and his mother to discuss withdrawal of the complaint, the Investigator informed the youth that she did not entirely believe him but did believe that the Respondent had acted appropriately.[51]
- File example #47: This was a complaint that the police had used excessive force in arresting the Complainant and "breaching" him out of a downtown entertainment district. The Complainant received abrasions to his face and head as well as knee strikes and punches. Emails on file suggest a lack of objectivity by the Investigator, who, among other things, questions the validity of the complaint before having done any investigation. The Investigator also writes emails to the Respondent and several witness officers that are critical of the Complainant. The Investigator tells the witness officers what other witnesses have said and suggests what she would like them to say, based on the other evidence she has reviewed. The gist of her comments is to minimize

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[48] One Investigator we spoke to told us that he had never received any formal training until he was nearing the end of his posting and that the formal training course for *Police Act* Investigators was a very recent development.

[49] We are unable to say whether the OPCC was privy to these examples of unprofessional correspondence on the Departments' investigative files because in our experience, the OPCC files rarely contained the complete contents of the Departments' investigative files.

[50] Other examples that have already been referred to include file examples #30 and 31.

[51] This file is also cited as an example in Sections 12 and 13.4 of the report.

the complaint and to justify the police conduct; subsequently, the evidence that the Investigator receives from the witness officers generally conforms to her suggestions.[52]

- File example #48: The Complainant alleged that police seized his bicycle, without any evidence that it was stolen, and refused to return it to him without proof of purchase. There was an email on file from the Investigator to one of the Respondents, saying "This is obviously a frivolous complaint, however he has filed a Form 1 complaint. Therefore I will need a duty report from you."[53]

8.3 INVESTIGATIVE DELAY

In some Departments we noted investigative delay that was often unexplained and without explanation.[54] On occasion, but not always, there was documentation on file offering reasons for the protracted delays. Some time-sensitive evidence such as video evidence and audio tapes that are routinely taped over are at risk of being lost when investigations are delayed. It was apparent that in some cases this sort of evidence was lost and Complainants and Respondents were disadvantaged by the delay.

Because statements make up most of the evidence on many investigations under the *Police Act*, the passage of time is an impediment to obtaining the necessary contemporaneous recounting of detail required to ensure a thorough and critical analysis of the complaint.

These are other examples of cases in which we noted concerns about investigative delay:

- File example #49: This was a complaint of excessive force (assault) lodged in April but no investigative action was documented on the file until October, at which time various police and civilian witnesses were asked to provide accounts of what they had witnessed more than five months before. One civilian witness was simply asked to forward a statement by email, which ended up being one paragraph long. The Investigator asked one of the Respondents for his notes, suggested that he was looking at summarily dismissing the complaint, and invited the Respondent to see him if he wished to look at the file to refresh his memory about the incident.[55]
- File example #50: This was an allegation of neglect of duty, in that an officer failed to document an assault file and process exhibits properly. The internally generated complaint was lodged in January 2002 with the disposition in August 2003. This was not a complex investigation yet it took nineteen months to complete.[56]
- File example #51: This was a complaint that officers had attended the Complainant's residence with mental health workers to transport the Complainant to the hospital. The Complainant alleged that he was attacked by one of the officers who tried to kill him by choking him. Initially a civilian witness identified concerns about the amount of force used by police. Two other civilian witnesses were present but were not interviewed for over a year and only after a request from the OPCC. Investigators contacted the Complainant seven months after making his complaint and requested an interview. The Complainant declined. There was no apparent reason for the

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[52] This file is also cited as an example in Sections 9, 10, 11, 12, 13, 13.4 and 14 of the report.

[53] This file is also cited as an example in Sections 13.4 and 14 of the report.

[54] One Department in particular demonstrated exceptional problems with investigative delay. The problems were so pronounced that the current Commissioner, shortly after taking office, felt compelled to write a series of letters to the Department pointing out its serious failures to comply with the statutory timelines under the *Police Act*.

[55] This file is also cited as an example in Section 13.4 of the report.

[56] This file is also cited as an example in Sections 13.4 and 15 of the report.

delay which creates the impression that the complaint may not have been taken seriously. The complaint was made in March. There was no documented investigative action between April and October. The file was concluded in July of the following year. If evidence of excessive force existed, the investigation went well beyond the six-month limitation period for summary conviction offences. This opens the police up to possible criticism of wilfully delaying the investigation to avoid charges.[57]

- File example #52: The initial allegation was assault and while the first investigation did not uncover independent evidence of assault it took eight months from the date of the alleged incident to complete. This is another case where the investigation went well beyond the six month limitation period for summary conviction offences which could open the police to additional criticism.[58]
- File example #53: The Complainant was taken into police custody for SIPP. While being booked into cells he requested a phone call but his request was denied. As a result, when he was asked for his address he refused to disclose it and, when police tried to take his wallet to get his address, he resisted. Several officers and the jailer got involved in the struggle, which resulted in the Complainant receiving a broken arm, a black eye, and a bloody nose. The complaint was made in September 2002 and was not concluded until March 2004. There was a long delay in the investigation during which the only action taken was to obtain medical records (previously requested) and to write a report. There did not appear to be sufficient reason for the delay and the matter was serious enough that it likely should have been reviewed by Crown Counsel.[59]
- File example #54: This file was a complaint of a very minor nature. Nothing was done on this file and there were no status reports provided for more than seven months. The OPCC wrote to the Chief Constable expressing concern about failure to comply with statutory timelines, reporting requirements, and rules for extensions. A summary dismissal letter followed within days but the Department never directly responded to the OPCC's letter of concern. There was no obvious reason for the delay.[60]
- File example #55: The Complainant had a fight with a neighbour. The police were called and a number of officers attended. The Complainant allegedly poked an officer in the chest and made other animated gestures and was arrested. He alleged that he was punched, kicked and beaten with a baton by police. The matter was not forwarded to Crown counsel and the investigation was not completed until a month after the limitation period for summary conviction offences had expired.[61]
- File example #56: The Complainant alleged that he had been unjustifiably arrested for speaking to a child. After significant delay, the police were unable to track down the Complainant to get a full recounting of the incident from him. This failure was used as an excuse for failing to conduct a full and thorough investigation. After more time passed and several late progress reports were delivered to the OPCC, the Discipline Authority chose summary dismissal as the means to close the file.[62]
- File example #28: This complaint of excessive force was made on September 17, 2002. The investigative steps taken amounted to reviewing a Report to Crown counsel on September

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[57] This file is also cited as an example in Sections 9, 12 and 13.4 of the report.

[58] This file is also cited as an example in Sections 12, 13.4 and 15 of the report.

[59] This file is also cited as an example in Sections 8.6, 9, 12 and 13.4 of the report.

[60] This file is also cited as an example in Section 13.4 of the report.

[61] This file is also cited as an example in Sections 8.6, 9, 12 and 13.4 of the report.

[62] This file is also cited as an example in Sections 13.4 and 14 of the report.

18, 2002, and trying to obtain a statement from a witness in May, 2003. The matter was then summarily dismissed on June 19, 2003.[63]

- File example #57: This was a complaint of unlawful search and detention of property. The complaint was lodged in December. No real investigation was conducted and it was summarily dismissed in June.[64]
- File example #58: This file involved the Complainant's loss of a gold chain that was broken during a struggle with police in the course of an arrest on drug charges. The Complainant alleged that he had asked police at the scene to retrieve the broken chain, which seemed to be corroborated by the prisoner booking sheet. The arrest occurred on January 18, 2003 and a Form 1 was signed on January 19, 2003. The *Police Act* investigation was suspended pending the outcome of the drug charges. The Complainant disputed the need for a suspension since the outcome of the drug charges would have no bearing on the validity of his complaint, which had only to do with the preservation and lodging of his property. The suspension, which was upheld by the OPCC, delayed the investigation from January to August, by which time the officers involved had no independent recollection of the circumstances of the loss of the chain.[65]
- File example #59: This was an allegation of unlawful arrest and excessive force. The investigation was conducted within a reasonable period of time but the unexplained delay in requesting a nightclub video tape meant that the tape had already been destroyed.[66]

8.4 INVESTIGATIVE RIGOUR

Some investigations lacked investigative rigour. This revealed itself in the following ways: investigations going only far enough to justify the underlying police conduct or to allow dismissal of the allegations; reliance on prepared statements or reports without taking steps to pursue significant points or inconsistencies in the evidence; failing or refusing to interview other witnesses; failing to focus on or address issues of lawfulness of arrest or search and seizure that may have given rise to the complaint; failing to investigate in a timely fashion; failing to complete a full investigative report; and, failing to conduct a full investigation of potentially criminal allegations for review by Crown counsel. These are some examples demonstrating these points:

- File example #60: The Complainant was a passenger in a vehicle stopped by police. He was asked to produce ID, refused and was arrested. He alleged excessive force. There was an issue about whether the arrest was lawful in this case. If not, the conduct may have amounted to an assault. The Respondent provided a prepared written statement in which issues about the legality of the arrest were not satisfactorily addressed. The statement of a witness officer lacked sufficient detail and ought to have been followed up with further inquiries. The delay in pursuing other witness statements may have adversely affected the quality of the evidence obtained. The investigation and the resulting report failed to grapple with the central issue in the case, which was the legality of the arrest.[67]
- File example #61: The police used a "Code 5" take down that involved several officers pointing their firearms at two individuals who turned about to be innocent. As the Complainant and a friend got into a vehicle they were surrounded by several police officers and ordered out of the vehicle at gun point. The Department's Use of Force expert reviewed the "Code 5" take

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[63] This file is also cited as an example in Sections 6.2, 12 and 13.4 of the report.

[64] This file is also cited as an example in Section 13.4 of the report.

[65] This file is also cited as an example in Section 13.4 of the report.

[66] This file is also cited as an example in Section 12 of the report.

[67] This file is also cited as an example in Sections 9, 12 and 13.4 of the report.

down procedures and endorsed the police conduct but did not actually discuss the significant difference between drawing and pointing a firearm. The lack of an investigation report meant that the file lacked any comparative analysis of the statements of the officers involved in the incident. The significant question that was not critically analyzed was the decision of the officers to point and aim firearms at individuals. The Investigator relied on the information provided in prepared statements without taking any steps to clarify significant issues with the officers.[68]

- File example #62: The Complainant, who was suspected of being a drug trafficker, was confronted by police, violently taken down, arrested, and "breached" to a transit station, where he was released but his property including ID and cash was not returned to him. The Investigator did not investigate the officers for possible assault or unlawful confinement related to the lawfulness of the arrest and the relocation. He took no steps to speak to the Complainant. Although the Investigator obtained duty statements from two of the three officers involved, they were arguably inconsistent with each other and inconsistent with the very brief occurrence report. There was no analysis done of whether there existed a proper legal basis for violently taking down, choking, arresting, then "breaching" a person who was suspected on scant grounds of being a drug dealer.[69]
- File example #31: The Complainant made two complaints about the same incident which alleged excessive force and a refusal by police officers to identify themselves. The first complaint was summarily dismissed. Shortly thereafter the Complainant obtained statements from two, apparently objective, third party witnesses who corroborated his complaint of excessive force. The second complaint alleged that one officer who had not been named as a Respondent in the first complaint had given "false testimony" about the incident. The Investigator relied on brief email duty reports without seeking to obtain fuller statements, even in light of evidence that appeared to corroborate the complaint. The third party witnesses were not interviewed. No statements were obtained from the Respondents to the first complaint (who were technically only witnesses to the second complaint) nor were those officers interviewed. Instead they were permitted to rely on their original duty reports from the first complaint, despite the clearly contrary evidence from the third party witnesses. Nothing was done to deal with clear, corroborated evidence suggesting that excessive force had been used and that, in the first complaint, the officers involved had tried to cover it up.[70]
- File example #63: The Complainant was arrested after a street check for open liquor in public. In the course of the arrest the Complainant suffered a broken leg. She alleged excessive force and failure by police to provide sufficient medical assistance. Although the incident was investigated, the file was not forwarded to Crown Counsel to review for possible assault charges. The duty reports provided by the officers (one Respondent, one witness), particularly the Respondent, lack sufficient detail about key points leading up to and including the interaction that led to the Complainant's injury. This was not pursued by the Investigator.[71]
- File example #64: The Complainant alleged that he exited his vehicle to speak to a friend in a park when he was approached by police and asked to produce his driver's license. When he declined he was arrested for obstructing justice and handcuffed. His keys were removed from his pocket. His car was searched and his driver's license was located. He alleged unlawful arrest, excessive force, and unlawful search. The legality of the arrest was never directly addressed

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[68] This file is also cited as an example in Sections 8.6, 9, 12 and 13.4 of the report.

[69] This file is also cited as an example in Sections 9, 12 and 13.4 of the report.

[70] This file is also cited as an example in Sections 6.3, 8.2, 9 and 12 of the report.

[71] This file is also cited as an example in Sections 9 and 12 of the report.

therefore the question of assault was not properly investigated. The investigation failed to address inconsistencies in the accounts provided by the officers and the Complainant.[72]

- File example #65: The Complainant was stopped by police at a transit station and asked if he had a ticket. He said no and an officer asked him for identification. When he put his hands in his pockets the officer told him to take them out and when he did not immediately respond the officer allegedly grabbed his arms and pushed him into some plexiglass. A second officer then put his hands around the Complainant's neck and allegedly choked him. No statement was ever obtained from the Complainant beyond the Form 1. There was no follow up to duty reports to explore salient issues about the use of force, including: grounds, timing, the degree and nature of the force used, and the position of officers and witnesses. There was no documentation of attempts to gain other evidence such as platform video coverage. A transit officer who was allegedly present was not interviewed in person nor were copies of his notes ever obtained. The excessive force allegation was never properly pursued although it should have been investigated under the Criminal Code and forwarded to Crown counsel for review.[73]

8.5 BACKGROUND INVESTIGATIONS OF COMPLAINANTS

Many files contained a criminal background investigation of the Complainant, which was often the first step undertaken by the Investigator in looking into a public trust complaint.[74] Comparable information, about Respondent Officers' discipline history, was not reflected on file. We do not suggest that the inclusion of such information about Respondents would necessarily be appropriate but the question arises why it is a standard practice to include it for Complainants. The presence of this sort of information on files could reasonably create an impression that if the Complainant has a criminal history, this might prejudice the full investigation or objective handling of a complaint. Although information about the Complainant's background often appeared on files, there were very few actual references to such material in notices or reports that we reviewed.

8.6 RELUCTANCE TO CONDUCT FULL CRIMINAL INVESTIGATIONS

Investigators seemed reluctant or casual about investigations of potentially criminal misconduct by police officers. Criminal investigations of excessive force were often eschewed or overlooked in favour of *Police Act* investigations that were at times inadequate in addressing fundamental issues such as lawfulness of arrests or searches. Thorough investigations with appropriately comprehensive statements documenting the independent observations of witnesses were often lacking. Rarely were full statements of Respondent officers taken, using the appropriate warnings. These are some examples of cases involving inadequate investigations of complaints alleging potentially criminal police misconduct:

- File examples #38 and #66: This was a complaint of excessive force. The Complainant was stopped by police for "jay walking". He alleged that an officer grabbed his arm, tried to take him to the ground and spun him into a parked car. Two files appeared to have been inappropriately combined and purportedly informally resolved, without proper documentation. The excessive force allegation was not pursued at all.[75]

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[72] This file is also cited as an example in Section 12 of the report.

[73] This file is also cited as an example in Sections 9 and 12 of the report.

[74] Some Departments had procedural "fly sheets" on the inside cover of the file clearly indicating that a police records check of the Complainant was a routine preliminary step in the processing a *Police Act* complaint.

[75] This file is also cited as an example in Sections 7.3, 7.4 and 13.4 of the report.

- File example #67: Unbeknownst to the Complainant, his house was inside a police perimeter that had recently been set up to catch two fleeing suspects. As he left his house to go to work, the Complainant was arrested, handcuffed by an officer who threatened to "break his f***ing arm" if he did not comply, his keys were taken from his pocket, and the police unlocked, entered, walked through, and quickly searched his house without permission. The police officers were not investigated for what could have amounted to charges of assault, unlawful confinement, and breaking and entering a dwelling house. No one interviewed the Respondent officers or required them to produce police notes. The Investigator specifically refused to interview an independent eye witness identified by the Complainant.[76]
- File example #68: The Complainant's wife collided with a tree not far from their apartment. No other motorist was involved, so she drove home and advised her husband what had happened. He went to the underground parking garage to examine the damage to their vehicle and was confronted by the police. An officer asked his name. When the Complainant, a small man in his 60's, asked why, the officer grabbed him, pushed his face onto the hood of the patrol car, and handcuffed him. At some point the Complainant was advised he was under investigation for Hit and Run. Other officers at the scene took the keys from his pocket and gained access to the underground garage to examine the vehicle. They then entered the apartment building and questioned his wife. After some time the Complainant was released from the handcuffs and escorted up to his apartment. Before leaving, the police issued a 24-hour driving prohibition to the Complainant's wife when there were no lawful grounds to do so because she was not operating or in care and control of a vehicle. There were significant inconsistencies between the officers' duty reports, which should have been addressed with follow up interviews. In his final notice dismissing the complaint, the Discipline Authority quotes law, some of which is incorrectly applied to the circumstances. The matter should have gone to Crown counsel for review of possible charges.[77]
- File example #61: The Complainant and a friend got into a vehicle and were surrounded by police and ordered out of the vehicle at gun point. The issue of pointing a firearm was not addressed or satisfactorily fleshed out in the investigation.[78]
- File example #55: The Complainant alleged that he was punched, kicked and beaten with a baton by police. The matter was not forwarded to Crown counsel and the investigation was not completed within the limitation period for summary conviction offences. The Complainant sustained significant injuries and the question of degree of force should have received an independent review by Crown counsel.[79]
- File example #69: A third party complained after observing the police interact with two males in a vehicle. The passenger was thrown on the ground and one of the officers placed his foot on the passenger's head, pressing downward. The Complainant alleged the conduct was provocative and hostile. The complaint was lodged August 20 and the file was concluded March 11. The assault allegation was not investigated as such but the Investigator did comment that the file had not been sent to Crown counsel. The Investigator had not interviewed the alleged victim or

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[76] This file is also cited as an example in Sections 9 and 12 of the report.

[77] Managerial advice was imposed in this case, an issue referred to in the OPCC's closing letter, but it was directed only at the issuance of the 24-hour prohibition and not the question of excessive force. This file is also cited as an example in Sections 9 and 12 of the report.

[78] This file is also cited as an example in Sections 8.4, 9, 12 and 13.4 of the report.

[79] This file is also cited as an example in Sections 8.3, 9, 12 and 13.4 of the report.

the other occupant of the vehicle. The report suggests that because the individuals involved did not complain they felt that the police actions had been appropriate.[80]

- File example #40: This was an allegation that a police officer had called the Complainant a "f…ing sleazebag" and arrested, detained, and questioned him without legal justification. The matter was informally resolved without investigation of possible charges of assault or unlawful confinement.[81]
- File example #53: Several officers and the jailer got involved in a physical struggle with the Complainant, which resulted in the Complainant receiving a broken arm, a black eye, and a bloody nose. The matter was serious enough that it likely should have been reviewed by Crown counsel but the investigation was delayed beyond the limitation period for summary conviction offences. The complaint was made in September 2002 and the file was not concluded until March 2004. The investigation failed to produce adequate statements from the jailer and the witness officers. The jail video ought to have been secured on the investigation file as an exhibit to ensure that it could be available for any future criminal or civil process. The Investigator focussed on the fact that the police did not intend to break the complaint's arm rather than considering whether the amount of force used to subdue the Complainant was reasonable.[82]
- File example #42: The Complainant, who was arrested after a police chase, alleged that excessive force had been used in his arrest, resulting in fractured ribs. He also alleged that the arresting officer failed to call him back and respond to inquiries about the disposition of his vehicle. The matter was informally resolved. No duty reports or will-says were obtained from the Respondent officers to address the serious excessive force allegations. Even the documented interactions between the assigned Investigator and the Complainant failed to address any aspect of the excessive force complaint. The documentation focused almost exclusively on the seizure of the vehicle. The only comment related to use of force was the indication that the Complainant found one of the officers too aggressive which was contained in the body of the letter consenting to informal resolution.[83]

8.7 DUTY STATEMENTS & DISCLOSURE OF EVIDENCE TO RESPONDENTS

The *Police Act* is silent on witness and Respondent officers' duties and responsibilities during an investigation. The OPCC's "Practice Directive on Statements by Police Officers Relating to Public Trust" directs that every officer shall cooperate fully with Investigators in the conduct of investigations of public trust complaints. The Directive goes on to say that prior to requesting the Respondent to provide a statement the Investigator shall advise the Respondent officer of the details of the public trust complaint and shall provide the Respondent with copies of the Form 1 and all existing statements made by the Complainant.

The B.C. Federation of Police Officers bulletin titled "Duty Reports and Statements", dated February 1999, also provides direction to its members on police statements as they relate to *Police Act* matters. The bulletin distinguishes between a duty report and a statement, as follows:

> *"duty report" is a report by a police officer about the officer's police duties.*
>
> *"statement" means, in relation to a complaint, an oral or written report or statement, other than a duty report, about the incident or incidents described in the complaint.*

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[80] This file is also cited as an example in Sections 9 and 12 of the report.

[81] This file is also cited as an example in Sections 7.3, 12 and 13.6 of the report.

[82] This file is also cited as an example in Sections 8.3, 9, 12 and 13.4 of the report.

[83] This file is also cited as an example in Sections 7.4 and 12 of the report.

The bulletin goes on to identify that a statement goes beyond the duties performed, describing or explaining how and or why events occurred. Illustrations given are: details of force used while conducting an arrest or relating a conversation alleged to involve discriminatory comments. The bulletin indicates that police officers under investigation are not obliged to provide statements but may do so voluntarily. It also emphasizes that ordered duty statements and voluntary statements by Respondents may not be entered as evidence in *Police Act* proceedings without consent of the Respondent.

Some Departments rely heavily on duty reports from Respondents and witness officers in order to conduct Public Trust investigations. The majority of duty reports we saw were reasonably comprehensive. Investigators tended to accept them at face value, however, without making further inquiries to clarify or address points that were critical in the investigation. At times this left gaps in the evidence that were not properly addressed in investigations.

The process of obtaining statements from Respondents differed from Department to Department. In some Departments Respondents were provided with copies of all statements or other evidence obtained from the Complainant in the course of the investigation prior to being required to submit a duty report. In others only the initial complaint was provided. Further information was treated as evidence that did not have to be disclosed prior to the Respondent's providing a statement. The former practice, although consistent with the guidelines provided by the OPCC, is inconsistent with ordinary investigative practices used in other types of police investigations. It is not a method that will ensure the best "pure" version of Respondent's statements. It may also fail to respect or protect the privacy rights of Complainants or other witnesses.

While we accept that a Respondent should be given proper notice of the nature of the complaint before being called upon to make a statement, this could be done by providing the Respondent with a copy of the complaint and sufficient particulars to permit the Respondent to identify the incident underlying the complaint. We are less convinced of the appropriateness of providing Respondents with complete copies of all statements and evidence emanating from the Complainant during the course of the investigation of a complaint, before Respondents are required to provide their own statements.

Undoubtedly, revealing all of the Complainant's evidence assists a Respondent in focusing his duty report on the matters relevant to the complaint. It also tends, however, to offer an advantage to the Respondent, who does not have to rely on his own unvarnished recollection of the incident. In their duty statements, Respondents often simply responded to the Complainants' evidence rather than presenting a clear, complete, and independent account of events.

We saw examples of correspondence on files in which the Investigator invited a Respondent to drop in and read the entire file before responding to the complaint. This raises the question of how a Complainant might feel knowing that the Respondent would be permitted to view the entire investigative file before having to commit to a version of events. It also gives the impression of an imbalance in the investigative process, with the advantage going to the Respondent officer.

Admittedly, in Departments that do not adequately particularize complaints, it would be difficult for an officer to respond adequately to all of the points raised by a Complainant without also being privy to all of the Complainant's evidence.

9 EXCESSIVE FORCE

As indicated above, almost one third (94) of the complaints in our main sample involved allegations of excessive force. In none of the files we reviewed, however, was a single excessive force allegation found to have been substantiated. Even without looking at the complaints themselves, this would seem to be an anomalous result.

Many of the excessive force complaints we reviewed were, in our view, appropriately investigated and found to be unsubstantiated or they were otherwise appropriately dealt with under the *Police Act*. In more than 20 excessive force cases,[84] however, we concluded that the findings, conclusions, or recommendations of the Investigator or the Discipline Authority or both were either unreasonable or inappropriate or, based on the material on file, we could not confirm their reasonableness or appropriateness. Our concerns arose primarily as a result of incomplete or inadequate investigations. This, in turn, was reflected in the Discipline Authorities' decisions, some of which were flawed because they were based on inadequate investigations and others of which seemed to go against the weight of the evidence on file.

These are some of the excessive force cases that caused us particular concern:[85]

- File example #82: The Complainant alleged that while getting on his bike he was approached and questioned by one officer when another officer came around behind him, grabbed him by his jacket hood, pulled him off his bike, and handcuffed him. When the officer noticed a knife that was in the Complainant's pocket he dragged the Complainant to a police car, threw him on the hood, and searched him. The officer asked the Complainant if he was a "skinner" then seized his bike and told him if he came up with a receipt for the bicycle he could have it back. In addition to losing his bicycle, the Complainant sustained a cut chin, broken denture, cracked rib, and bruises. This complaint involved an allegation of excessive force that did not appear to have been appropriately investigated or referred to Crown counsel.[86]
- File example #61: As the Complainant and a friend got into a vehicle they were surrounded by several police officers and ordered out of the vehicle at gun point. On thin grounds, which turned out to be inaccurate, the police believed that the vehicle had been stolen. Apart from the belief that the vehicle had been stolen, the police had no other basis for believing that the occupants of the vehicle would be armed or dangerous. Nevertheless, the police used a "Code 5" take down

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[84] File examples: #31, #41, #51, #53, #55, #61, #60, #62, #63, #65, #67, #68, #69, #70, #71, #72, #73, #74, #75, #76, #77, #78, #79, #80, #81, #82 and #83.

[85] Others, that have already been described include file example #53, #67, and #68.

[86] This file is also cited as an example in Sections 11, 12 and 15 of the report.

that involved several officers pointing their firearms at two individuals who were innocent. The Department's own Use of Force expert reviewed the "Code 5" take down procedures and endorsed the police conduct but did not actually discuss the significant difference between drawing and pointing a firearm. The lack of an investigation report was significant in this case because it meant that the file lacked any comparative analysis of the statements of the various officers. One constable's duty statement articulates the reasons for having his firearm unholstered at the low ready position and pointed in a safe direction at all times. Another officer, however, describes how officers "aimed" at the Complainant, who had her hands up and appeared terrified. During the incident one officer noticed that two other officers were in the line of fire and he had to order them to reposition for safety. Neither the internal police investigation, nor the finding of the Discipline Authority seemed to acknowledge or consider that the police reaction might have been disproportionate to the threat posed.[87]

- File example #74: The Respondent allegedly assaulted one handcuffed prisoner by hitting his head against the front fender of a patrol car. As a result, the fender of the patrol car was dented and the prisoner suffered a cut to the inside of his lip and two loose teeth. The Respondent also allegedly assaulted another handcuffed prisoner by removing him from the back seat of a patrol car and forcing him to the ground. These allegations were externally investigated and resulted in criminal charges. The charges were ultimately stayed by Crown counsel during the course of the trial because of weaknesses in the evidence and because of a Use of Force expert report obtained by the Respondent's lawyer. A third complaint of alleged assault against the same Respondent, which had been suspended pending the outcome of the criminal proceedings for the first two matters, was then summarily dismissed. The alleged conduct in the three incidents was somewhat similar and very serious. Given the lower standard of proof and the different focus of the *Police Act* (corrective not punitive), it still may have been appropriate to consider imposing disciplinary or corrective measures notwithstanding the result in the criminal case. In our view, without fully reviewing all of the evidence at the criminal trial (which was not on file) and perhaps obtaining a report from another Use of Force expert, the Discipline Authority may not have been in a position to be sure that summary dismissal was appropriate.[88]
- File example #47: This was a complaint that the police had used excessive force in arresting the Complainant and "breaching" him out of a downtown entertainment district. The Complainant received abrasions to his face and head as well as knee strikes and punches. Emails on file suggest a lack of objectivity on the part of the Investigator, who, among other things, questions the validity of the complaint before having done any investigation. She also wrote emails to the Respondent and several witness officers that were critical of the Complainant. In the emails, the Investigator tells the witness officers what other witnesses have said and suggests what she would like them to say, based on the other evidence she has reviewed. The gist of her comments was to minimize the complaint and to justify the police conduct; the subsequent evidence that the Investigator received from the witness officers generally conformed to her suggestions.[89] [90]

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[87] This file is also cited as an example in Sections 8.4, 8.6, 12 and 13.4 of the report.

[88] This file is also cited as an example in Sections 9 and 13.6 of the report.

[89] This is one of a number of cases we saw from this Department in which suspects suffered similar sorts of injuries to their faces and heads as a result of being "taken down" or "subdued" on the ground. Suspects' heads were pressed down, using knees or hands, and their faces were rubbed against the concrete or asphalt while they were being handcuffed. This may have been unintentional, or attributable to the suspect's own movements while being arrested; but, in light of the frequency (even among the files we reviewed) with which such injuries occurred and given that there were specific complaints from people who alleged that the police had intentionally rubbed their heads or faces against the ground, this may have been intentional. We saw no evidence that anything was ever done to address this apparent trend.

[90] This file is also cited as an example in Sections 8.2, 10, 12, 13, 13.4 and 14 of the report.

- File example #81: The Complainant was in the back seat of a vehicle, while police were arresting her husband outside. She became concerned and demanded to know the reason for the arrest. Police told the Complainant to "shut up". When she continued to demand an explanation, the police ordered her out of the vehicle, attempted to handcuff her, and, in the course of doing so, broke her arm.

  A criminal assault investigation ought to have been pursued and the matter reviewed by Crown Counsel. There appears to have been a meeting between the Investigator and the Respondent early in the investigation but there are no notes or memos on file about the contents of their discussion at that meeting and there is no indication on file that the Respondent was interviewed in detail, even though he should have been.

  Although the Respondent was notified of the complaint relatively soon after the incident, his duty report (prepared by legal counsel) was not provided until the day after the six month limitation period for summary conviction offences would have expired. No written statement was obtained from the Complainant. A taped statement was obtained but neither the tape nor a transcription of it was on file and the Investigator's notes of the interview were obviously incomplete. There were significant gaps in the Respondent's occurrence report and duty report and significant inconsistencies between them. His notes were not on file. Neither the Complainant's husband nor her friend, both of whom witnessed the incident, was interviewed. A brief written statement provided by the friend on the evening of the incident lacked any significant detail about the issues of interest to the *Police Act* investigation.

  The Investigator's report reflected the inadequacy of the investigation, and also reflected an apparent bias in favour of the Respondent. In several respects the report misstated or overstated the evidence, in a manner which tended to justify the Respondent's conduct. The report also failed to grapple with significant gaps and inconsistencies in the Respondent's occurrence report and duty report. The evidence obtained was inadequate to support a finding that the complaint of excessive force was unsubstantiated. Indeed, even on the inadequate evidential basis that did exist, it was clear that the Investigator's conclusions were unsupportable. The Investigator failed to deal in any credible way with the lawful basis for ordering the Complainant out of the car and then arresting her. Even if there had been a lawful basis, which is not borne out by the evidence, no analysis was done of whether the force used was excessive in the circumstances.

  Finally, like the Investigator's report, the Discipline Authority's letter asserts facts and reaches conclusions which are not borne out by the evidence, which are sympathetic to the Respondent, and which fail to deal with whether the Application of any force (or the degree of force used) was reasonable in this case. The handling of this file raised the strong impression that the police were condoning or encouraging an avoidance of possible criminal liability for police misconduct.[91]

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[91] This file is also cited as an example in Sections 9 and 12 of the report.

10 BREACHING

We saw a number of complaints from one Department that involved, among other things, an allegation of a practice called "breaching". This refers to briefly arresting and moving a suspect, purportedly on the basis of an "apprehended" breach of the peace, pursuant to s. 31 of the Criminal Code. In most of the cases of breaching that we saw, the practice appeared to have been based not on any reasonable and justifiable belief that the suspect had breached or was about to breach the peace but rather on a belief or more often a suspicion that the suspect had or might be engaging in criminal conduct or was otherwise "undesirable". Many of the breached suspects on the files we saw were suspected drug dealers. The officers involved usually breached them in order to remove them from a high crime area and deposit them elsewhere, usually at a transit station, with the implication that they "get out of town." We saw no evidence that anyone ever identified or commented upon the tendency of the police to resort to "breaching" and no questioning of the legality or the constitutionality of the practice, although it squarely arose in several of the complaint files we reviewed.[92]

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[92] File examples: #47, #70, #80, #84, and #85.

11 SEARCH AND SEIZURE & IMPROPER HANDLING OF PROPERTY

We saw complaint files from a number of the Departments that demonstrated an unawareness of, or an inability or unwillingness to abide by, the legal and constitutional limits of police powers of search and seizure and the legal requirements upon police officers concerning detention and return of seized goods. It seemed to be a fairly consistent practice among Departments to seize property, particularly bicycles, from the holder of the property, without a search warrant and without sufficient grounds to arrest or lay a charge, and to keep the property, unless the holder of it could produce a receipt or otherwise prove that it was his. In most, if not all, of these cases no apparent attempt was made to do a report to a justice or to follow the other requirements under sections 489.1 and 490 of the Criminal Code. In virtually all such cases, complaints were routinely dismissed without any or any significant investigation or consideration of the legal or constitutional requirements.[93]

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[93] File examples: #30, #82, #86, #87, #88, #89 and #90.

12 REVIEW BY CROWN COUNSEL

While some of the complaint files we reviewed had been forwarded to Crown counsel for consideration of possible charges, we found that there were a troubling number of complaints involving allegations of relatively serious police misconduct that were not investigated as criminal complaints and were not sent to Crown counsel for consideration of possible charges.[94]

Another serious concern we identified was unexplained and unreasonable delay in completing investigations into some complaints of potentially criminal conduct by police officers.[95] In some of these cases, several of which have already been described above, the conclusion of the investigation seemed to coincide with the end of the six month limitation period that would ordinarily apply to summary conviction offences. This could reasonably give the impression that the police had intentionally delayed the completion of their investigations until after the expiry of the limitation period.

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[94] File examples: #23, #28, #31, #40, #41, #42, #45, #46, #47, #51, #52, #53, #55, #59, #60, #61, #62, #63, #64, #65, #67, #68, #69, #71, #72, #73, #77, #79, #80, #81; #82, #83, #91, #92, #93, #94, #95, #96, #97, #98, #99, #100, #101, #102, #103, #104 and #105.

[95] File examples: #51, #53, #55, #81, #82, and #91.

13 THE DISCIPLINE AUTHORITY

The role of Discipline Authority is difficult, time consuming and demanding. The Discipline Authority has a stewardship role in the handling of police complaints and internal discipline. The Discipline Authority is in a position to observe trends and emerging problems early on and to address them either proactively or reactively. Public complaints often provide a snapshot into public dissatisfaction, which in some cases can point out potential problem areas that require training or policy changes before they result in larger issues attracting negative publicity or litigation.

The Discipline Authority is in the best position to observe and respond to apparent trends in complaints or police conduct.[96] The Discipline Authority should, when appropriate, identify and address such trends proactively. We saw no clear evidence that Discipline Authorities were doing so.

The other aspect of the Discipline Authority's role is leadership. Decisions on police complaints send a message to the public and to police officers about what is acceptable police conduct.[97]

Complainants' interactions with police frequently involve the disadvantaged being up against the powerful. The police have ample resources and if they choose to do so, they can close ranks to defend against allegations or attacks. This was to some extent reflected in an "institutional sense" or "tone" that we noted about the way some Departments dealt with complaint files. Some members of some Departments seem to start from the premise that the police are right and that complaints are presumptively unjustified, while others demonstrated a more balanced approach. The Discipline Authority has a significant responsibility to foster an environment that rises above these types of challenges to ensure that public concerns are properly addressed even when the resulting decisions may be internally unpopular.

Decisions about alleged police misconduct are often controversial. The issues are emotionally charged, involving complex competing interests that are frequently opposed. There is often no "right" answer because some aspect of the Discipline Authority's decision may always leave someone dissatisfied. Issues of credibility abound because Complainants and witnesses often have criminal records or are marginalized persons with drug or mental health problems. They are complaining and providing evidence about police officers who are experienced witnesses, trained to articulate legal justifications for their conduct. The consequences of incorrect decisions are significant, pitting loss of public trust and confidence against the erosion of police morale and the loss of confidence by individual police officers about exercising the full scope of their authority in the course of their duties.

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[96] An example of this would be the apparent trend in one Department of injury to the faces or heads of persons being subdued upon arrest. This is referred to above, in relation to the discussion of File example #47 (page 32).

[97] For example, in File examples #25 and #103, the DA excused without correction complaints concerning the use of inappropriate language. In other Departments similar conduct was treated as clearly unacceptable and action was taken to ensure that the Respondent officers understood that their behaviour was unacceptable to the DA and the Department.

Some specific issues about the Discipline Authority that surfaced during our review were:

- Delegation of the discipline authority responsibility;
- Insufficient involvement in the decision-making process;
- Failure to ensure compliance with requirements under the *Police Act*;
- Lack of documentation on files demonstrating active supervision by the Discipline Authority of *Police Act* investigations;
- Offering prehearing conferences in serious cases where dismissal of the Respondent should have been considered;
- No apparent consideration of overall trends in individual officer conduct regardless of whether specific complaints were or were not substantiated; and
- Downgrading discipline without articulating a reason for doing so.

13.1 DELEGATION OF DISCIPLINE AUTHORITY RESPONSIBILITIES

In some Departments the Chief Constable retained the role of Discipline Authority while in others the responsibility was delegated to another senior officer. In the latter case, it was unclear what parameters had been placed on the delegation or to what degree the Chief was routinely kept apprised of the process of complaints. We saw no basis for concluding, however, that the delegation of the Discipline Authority role, in itself, had any adverse effect on the quality of the determination in any given case.

13.2 INSUFFICIENT INVOLVEMENT IN THE DECISION-MAKING PROCESS

From our review, certain Chief Constables obviously stood out as being more directly involved in the management and decision-making role on public trust complaints. There were a few Departments in which it was clear that the Chief took a direct personal role in overseeing the complaints process. These were the same Departments in which it was apparent that the Chief Constables were not only involved in the ongoing management and supervision of the complaints process, but they also exercised a degree of independence in their decision-making rather than relying entirely on the Investigator's conclusions and recommendations. These Chiefs also appeared to be keenly interested in establishing and maintaining public trust.[98] It is probably not coincidental that these same Chief Constables also made it known to us during the course of our review that they would welcome feedback on the handling of complaints by their Departments.

The *Police Act* process requires Investigators not only to investigate but also to provide findings, conclusions, and recommendations. This creates a process under which Discipline Authorities could be seen to abdicate their responsibility to review and make a determination on the merits of the complaints in favour of simply "rubber stamping" the decisions of Investigators. The majority of files we reviewed showed insufficient evidence of a truly separate and distinct process of decision-making by the Discipline Authority at the conclusion of the investigation. It was a common practice for some Investigators to prepare the Discipline Authority's final notice on the same date, and coming to the same conclusions, as the investigation report. This creates the impression of a single Investigator/decision-maker. In our view, there is value in recognizing and maintaining the separation between the investigative and decision-making functions. Such a separation was not usually evident in the files we reviewed.

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[98] In one notable case the Chief Constable went out of his way to meet with and listen to a Complainant who had been extremely demanding, sarcastic and antagonistic in his emails and correspondence to the police.

13.3 FAILURE TO ENSURE STATUTORY COMPLIANCE

There were Departments that appeared to ignore certain clear requirements under the *Police Act*. One Department failed or neglected to produce investigation reports, as specifically required under s. 56(6) of the *Police Act*. Others failed to provide investigative progress reports as required under s. 56(1) of the *Police Act* or provided them late or in a "boiler plate" form that provided no substantive information about the progress of investigations. In a very few cases the contents of these reports were misleading or plainly false. In most cases, these problems persisted for some years, which suggests that the Discipline Authority was unaware of the statutory requirements, unaware that the Department was not meeting the requirements, or consciously chose to ignore the statutory requirements. In those Departments in which there were significant problems of non-compliance with statutory requirements, even pointed letters from the OPCC sometimes failed to motivate the Departments to set up systems or allocate resources to ensure adherence to the requirements of the *Police Act*.

The majority of files we reviewed from one Department did not contain a separate investigation report. In those cases, the Discipline Authority's final notice, which had obviously been drafted by the Investigator, did double duty to fulfill both functions. Despite this fairly significant procedural deficiency, in most such cases the Discipline Authority's final notice was sufficiently detailed and comprehensive that the lack of a separate investigative report did not undermine the validity of the investigation or the Discipline Authority's decision. In a few cases, however, the lack of a separate investigative report did in our view adversely affect the overall handling of complaints.[99] On one file, the Department's practice was initially questioned by an OPCC Analyst but, ultimately, the Analyst agreed, despite the mandatory requirements under the *Police Act*, not to require the Department to provide an investigation report unless discipline was contemplated.[100]

The files of one Department stood out for the clarity of documentation detailing the nature of the decision or Section of the *Police Act* to which the decision related. This Department had also developed a computer data base program to manage and track *Police Act* investigations. The information collected also served as a management tool.

13.4 LACK OF DOCUMENTATION DEMONSTRATING ACTIVE DISCIPLINE AUTHORITY SUPERVISION

We saw a number of files which we felt required more investigation or clarification of some point or issue in order to ensure a properly informed determination. Few of the files we reviewed, however, contained any evidence of active supervision of the internal investigative process by the Discipline Authority (or other supervisor) in the form of written suggestions or directions about avenues of investigation that needed to be conducted or followed up to ensure that the final investigative product was comprehensive.

It cannot be known how much supervision Discipline Authorities actually provided because it was not documented on the files. The fact that some of the same types of shortcomings persisted over time, however, suggests that they were not identified or addressed by the Discipline Authority or a supervisor because the degree of supervision was inadequate. One concern that surfaced which may have contributed to this apparent absence of evidence of supervision was the established practice of routine direct communications between Investigators and OPCC analysts. This practice in effect removes the Discipline Authority from significant aspects of managing and supervising the *Police Act* investigation process.

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[99] File examples #75, #106, #107, and #108.

[100] File example #109.

The role that is envisioned for Investigators under the *Police Act* is to report to the Discipline Authority, who makes decisions. Frequent direct contact between Investigators and OPCC Analysts tends to mean that Discipline Authorities, who are the people specifically appointed under the *Police Act* to exercise and review the disciplinary functions within Departments, are to a great extent insulated or even isolated from the problems that arise in the day to day investigation and processing of complaints under the *Police Act*. This either results from or tends to further aggravate problems that we discuss in other places in this report, namely: the Discipline Authoritys' ability (which is made possible by the structure of the *Police Act*) to abdicate most or all of their decision-making responsibilities to Investigators; and the Discipline Authorities' tendency to miss obvious trends, in the behaviour of particular officers, in the overall operations of their Departments, or in the quality and timeliness of complaint investigations.

A serious concern we identified (and have already discussed above) was the unexplained delay in completing investigations in a number of files.[101] Some of these files involved allegations of potentially criminal misconduct, including excessive force that the Discipline Authority allowed to stretch beyond the six month limitation period that would ordinarily apply to summary conviction offences.

Some investigative files contained unprofessional comments suggesting potential bias on the part of Investigators.[102] There was no documentation on file indicating that these files had been reviewed or audited by Discipline Authorities or other supervisors to identify and correct these types of problems, which could harm the integrity of the investigative process.

An issue common to most of the Departments was a failure to address, analyze, or discuss the grounds for arrest or grounds for search and retention of items seized.[103] The actions that flowed from an arrest or search were often the trigger of complaints. Many allegations of excessive force could not be properly determined without first resolving whether an arrest or search had been lawful or reasonable. The necessary critical analysis by the Discipline Authority of the grounds for and appropriateness of arrests or searches, which was a precondition to dealing with other aspects of the complaint, was often lacking. In determining that the force used was appropriate, the Discipline Authority often missed or ignored the fact that the initial arrest or search may have been unlawful or unauthorized, making any subsequent use of force unacceptable. This was a weakness in both the investigations and the decision-making on a number of complaint files.

These are some other examples of files in which Discipline Authorities failed to address issues surrounding the legality of arrests, searches, and detention of property:

- File example #89: This was a complaint of an unlawful personal search of a street person. The statements of the Complainant and Respondent conflicted regarding the search and a witness had not been interviewed. Further investigation may not have resulted in discipline but the investigative step that was missed was significant enough that it should have been identified by the Discipline Authority.[104]
- File example #77: This case involved complaints of neglect of duty, excessive force and unprofessional conduct, including the specific allegation that the police had lost the Complainant's

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[101] These files have already been discussed above: File examples #28, #49, #50, #51, #52, #53, #54, #55, #56, #57, #58, #93, and #110.

[102] These files have already been referred to above: File examples #29, #30, #46, #47, #48, #111, #112 and #113.

[103] A number of these cases have already been referred to above: File examples #38, #60, #61, #62, #66 and #73.

[104] This file is also cited as an example in Sections 11 and 14 of the report.

identification and that the Complainant had been assaulted while in jail. Delay in lodging the complaint made the investigation more difficult but little or no investigation was ultimately conducted beyond obtaining duty reports from Respondent officers and copies of police reports. The files did not contain a comprehensive interview of the Complainant but only Investigator's notes, which were difficult to read. Several witness officers and ambulance attendants were not interviewed. Criminal allegations of abuse while in custody were not addressed. The complaint of missing identification was not investigated but the Complainant's passport was attached to the file.[105]

- File example #108: The Complainant alleged that the police had seized items under a search warrant but refused to return property that was unrelated to the charges. The Discipline Authority did not document any steps to require the Investigator to determine or consider the lawfulness of retaining the exhibits. The Discipline Authority's notice stated that the items were not entered in court but there is no statement about what happened to them and why and under what authority they were being retained by police.[106]
- File example #52: The Complainant was a passenger in a vehicle the driver of which had received a 24 hour prohibition. The Complainant was given an ASD test to see if he was fit to drive but he failed. He became agitated when the officer would not return his license and a struggle ensued after which the Complainant was arrested for allegedly being drunk in public. The primary issue was the legality of the arrest, the alleged basis for which was the *Liquor Control and Licensing Act* power to arrest for being intoxicated in public. None of the officers thought it was necessary to lodge the Complainant so they released him. Instead of seeing this as weakening the initial legal basis for the arrest, the Investigator asserted that the arrest had been lawful but that the subsequent release was "negligent". In his report the Discipline Authority made no mention of the Investigator's conclusion that the release was "negligent", and ultimately concluded that the complaint was unsubstantiated, without considering the legality of the arrest.[107]

Finally, as already referred to above, one Department relied too heavily on summary dismissal, only doing partial investigations in many cases. In our view, this reflects either a lack of sufficient supervision by the Discipline Authority or the Discipline Authority's apparent condoning and approving of the dismissal of complaints on an inadequate or improper basis.

13.5 OFFERING PREHEARING CONFERENCES IN SERIOUS CASES

Section 58(7) of the *Police Act* provides that disciplinary or corrective measures accepted by a Respondent and approved by the Discipline Authority at a prehearing conference constitute a resolution of the matter, which is not open to question or review by a court on any ground, unless the Commissioner orders a public hearing.

Of the very few cases that actually resulted in discipline or corrective measures, there were a few in which the Discipline Authority's offer to the Respondent of a prehearing conference was, in our view, improper because the default established was too serious. In these cases, a prehearing conference may well have been contrary to the public interest and Section 58(2) of the *Police Act*:

- File example #114: This was an investigation into "off duty" impaired driving by a police officer, who had collided with another vehicle while operating a police vehicle. This caused extensive damage to both vehicles. The officer attempted to leave the scene of the accident and was driving on an expired driver's license. His blood alcohol readings were 170 mg/100ml blood. The Discipline Authority offered a Pre Hearing Conference after which he agreed to impose the following corrective measures:

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[105] This file is also cited as an example in Sections 9 and 12 of the report.

[106] This file is also cited as an example in Sections 13.3 and 14 of the report.

[107] This file is also cited as an example in Sections 8.3, 12, 13.4 and 15 of the report.

- Acceptance of Human Resources assistance to deal with any issues related to alcohol consumption or abuse, as deemed necessary by Human Resources;
- Acceptance of any required treatment options deemed necessary by a designated physician; and
- Acceptance of and participation in any treatment options determined to be necessary by Human Resources and the physician.

Given the seriousness of the Respondent's defaults this result may not have been appropriate.

- File example #95: This was an investigation where an officer used a police vehicle while off duty after previous orders not to do so. The Respondent had been drinking before driving and his children were in the vehicle at the time. When other officers attended he was belligerent with them and may have assaulted one or more of them. The Discipline Authority initially suggested that more severe discipline be imposed (five days without pay and attendance at an alcoholism treatment centre), which after prehearing conference was reduced to three days suspension and attendance at counselling but not necessarily at a treatment centre. The file indicates that within weeks of the imposition of the discipline, the Respondent was refusing to cooperate with the requirement of counselling. [108]
- File example #115: The Respondent made inappropriate sexual comments to two women in the course of attending a call in which the women were witnesses. The officer then made a further visit to one of the women, called her, and made further inappropriate sexual comments and suggestions to her. At all times he was on duty and in uniform. The recommended discipline (two-day suspension, psychological counselling, completion of a course on ethical police behaviour, prohibition from promotion for three years) was not severe enough given the seriousness of the incident and given that the Respondent had a prior discipline breach involving asking inappropriate sexual questions of a sixteen year sexual assault victim. The Discipline Authority elected to offer the Respondent a prehearing conference and, as a result, agreed to a lesser discipline (written reprimand, psychological counselling, completion of a course on ethical police behaviour, and restriction on promotion for two years). This case was unique and serious. The only similar case referred to as a precedent in the Investigator's report had resulted in dismissal. Dismissal ought to have been considered in this case. The offer of a prehearing conference and the agreement to a lesser penalty were inappropriate in the circumstances. [109]

In a number of cases, after a prehearing conference, the Discipline Authority reduced the proposed discipline without providing a documented rationale for doing so. This was usually after there had been a recommendation on discipline by the Investigator or an initial view as to discipline by the Discipline Authority, either or both of which appeared to be reasonable and supported by authority. For example:

- File example #94: This was an investigation related to an officer selling items on eBay that he took from a City Firehall slated for destruction. After the initial investigation report was completed and corrective measures were recommended, the Discipline Authority offered the Respondent a prehearing conference, during and subsequent to which the Discipline Authority obtained further information. Subsequently the Discipline Authority chose to dismiss as unsubstantiated a complaint of corrupt practice, leaving only a complaint of discreditable conduct. Ultimately the Discipline Authority chose to vary the initial determination that a written reprimand was appropriate to conclude that a verbal reprimand would suffice. No clear reason was given for this change.[110]

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[108] This file is also cited as an example in Sections 12 and 14 of the report.

[109] This file is also cited as an example in Section 16 of the report.

13.6 NO CONSIDERATION OF OVERALL TRENDS

In more than one Department, we saw multiple complaint files involving similar allegations of misconduct by the same officer. Notwithstanding that each of the individual complaints may have been properly found to have been unsubstantiated or summarily dismissed, a review of the files together suggested that it may have been appropriate for the Discipline Authority to act proactively, recognizing or identifying trends in order to prevent future incidents and effectively manage police personnel. While there may be insufficient grounds to make a finding of discipline default on the evidence of a single incident, the existence of a number of similar complaints of the same nature could form the grounds to suggest a problem which could be addressed from a management, training, or supervisory point of view distinct from formal corrective or disciplinary action. On the files we reviewed, we saw examples where Discipline Authorities may not have felt that they had options available to them to address concerns such as this under the *Police Act* or otherwise. In some cases the Discipline Authority documented concerns and recognized that the problem needed some form of attention.[111] In other cases there was no indication on file that the Discipline Authority had considered action beyond concluding the *Police Act* matter. An example of this includes:

- File example #116 and #117: These files involved several complaints of rude, unprofessional or unduly confrontational behaviour by a police officer. Two complaints were considered together with four others alleging similar misconduct. The Investigator's concluding comments suggest a clear recognition that the Respondent's actions would continue to give rise to public complaints and difficulties for the Department notwithstanding that the individual complaints were each found to be unsubstantiated. In our view, these complaints, taken and considered together with the others, may have risen to the level of discreditable conduct; or, at least, may have indicated that formal discipline may have been appropriate, notwithstanding that the complaints, taken individually, may have been properly determined to be unsubstantiated.[112]

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[110] This file is also cited as an example in Sections 12 and 14 of the report.

[111] File examples #7, #35, #40, #74 and #118.

[112] File #116 is also cited as an example in Section 14 of the report.

14 LACK OF SUBSTANTIATED COMPLAINTS

By virtue of their responsibilities and the circumstances under which the police are often forced to interact with citizens, police actions necessarily will give rise to a broad range of complaints. Some of these are serious. Others are far less so. Some complaints are valid, while others clearly are not. As one might expect, we found in our review that most of the complaints in our sample were validly concluded as unsubstantiated, or were otherwise appropriately resolved without discipline or correction under the *Police Act*, through summary dismissal, withdrawal, or informal resolution.

Of the relatively few files that had been concluded as "substantiated", it was our view that all of them merited that conclusion. We were not always in complete agreement, however, that the ultimate disciplinary or corrective measure imposed (or not imposed) in connection with substantiated complaints gave sufficient weight to the seriousness of the particular discipline default that had been established.

One striking conclusion that flows from our review is how few of the complaints, only 24 of 294 in the main sample (8%), were found to have been substantiated. This included 22 Public Trust complaints, one Service or Policy complaint, and one Internal Discipline complaint. Even fewer complaints, only nine of 294 in the main sample (3%), were found to merit the imposition of any formal discipline under the *Code of Conduct*. This consisted of four verbal reprimands, four one-day suspensions without pay and one direction to take training. No disciplinary or corrective action, formal or informal, was taken in 265 (90%) of the 294 complaints in the main sample. Managerial advice, or some other informal discipline, was given in 20 cases.

As was true of the excessive force cases that were found to be unsubstantiated, there were a number of unsubstantiated complaints in other categories in which the findings, conclusions, or recommendations of the Investigator or the Discipline Authority or both were, in our view, either clearly unreasonable or inappropriate. In a number of instances, because of the lack of sufficient information on file, we could not confirm whether the findings, conclusions, or recommendations of the Investigator or the Discipline Authority were reasonable or appropriate.[113] In other cases, because of what we perceived to be flaws or shortcomings in the investigations themselves, we were unable to confirm whether the final resolution of the complaints was reasonable and appropriate.[114]

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[113] File examples #10, #34, #35, #48, #88, #94, #95, #98, #108, #116, #119, #120, #121, #122, #123, #124 and #125.

[114] File examples #47, #56, #89, #93, #126, #127, #128, and #129.

15 "INFORMAL" DISCIPLINARY ACTION

As indicated above, in cases in which some disciplinary action was taken in response to complaints, by far the most common response of Discipline Authorities was to offer managerial advice.[115] Managerial advice was given not only in cases in which the complaints had been found to be substantiated but also in cases in which the complaints were withdrawn, informally resolved, or found to be unsubstantiated. Specific examples of complaints in respect of which managerial advice was given include: inappropriate or unprofessional language,[116] inappropriate police chases that led to property damage or injury,[117] destruction or loss of police notes,[118] failing to attend court when required,[119] improper seizure and detention of property,[120] failing to carry out a proper search of a prisoner for weapons and drugs,[121] failing to document an assault complaint or to process exhibits,[122] failing to properly secure a seized knife,[123] and assault, carried out both on and off duty.[124]

Managerial advice does not fall within the definition of Disciplinary or Corrective Measures as defined in s. 19(1) of the *Code of Conduct.* In reality, managerial advice amounts to another level of discipline below a verbal reprimand, which is the lowest level of discipline provided for in the *Code of Conduct*. It is difficult to ascertain any real difference between a verbal reprimand and managerial advice but the frequent resort to it suggests that Discipline Authorities either view a verbal reprimand as too harsh for the majority of discipline defaults or that they wish to avoid imposing any "formal" discipline or corrective measure under the *Code of Conduct*. Either way, consideration should be given to amending Section 19(1) of the *Code of Conduct* to regulate the use of managerial advice and deal with the apparent unwillingness of Discipline Authorities to limit themselves to the options for discipline provided for under the *Code of Conduct*.

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[115] For the purposes of this discussion we are including managerial advice in all its forms, including advice and counseling as to future conduct.

[116] File examples #26, #130, #131, #132, #133, #134 and #135.

[117] File examples #71 and #72.

[118] File example #136.

[119] File example #137.

[120] File example #82.

[121] File example #44.

[122] File example #50.

[123] File example #123.

[124] File examples #10 and #52.

16 THE "DISCIPLINE" FILES

After reviewing the files in the main sample we reviewed a further group of OPCC files, in which, according to OPCC records, discipline or corrective measures had been imposed. Unlike the complaints in the main sample, for the Discipline Files we did not have access to the Departments' files. Therefore, we could not always be satisfied that the information available for our review was sufficient for us to be able to make an assessment of the reasonableness or appropriateness of the Department's investigation or conclusion of complaints.

The Discipline Files involved a broad range of police misconduct, including: off duty drinking driving offences, one of which involved serious damage to a police vehicle and injury to a third party, deceit or misleading statements, improper seizure, detention, or misuse of property, abuse of authority involving issuance of unjustified or improper traffic tickets, misuse of CPIC, improper, inappropriate, or obscene language or comments, public disclosure of information contrary to an express order, neglecting to document an investigation or write up a file, excessive force through misuse of an emergency vehicle, failing to comply with a court-ordered no contact order, harassing and threatening phone calls, harassment, and spousal assault.

The actions taken by Discipline Authorities included: no disciplinary action in three cases, managerial advice in seven cases, verbal reprimands in seven cases, written reprimands in ten cases, and four suspensions without pay, of one, three, and four days respectively.[125]

In most of the Discipline Files we reviewed, it is fair to say that when discipline or corrective measures were imposed they appeared to fall generally within the range of what could be considered to be reasonable and appropriate. In a number of cases, though, we felt that the discipline or corrective measures imposed were at or below the bottom end of the range of what was reasonable and appropriate.

These are examples of cases in which we thought that the ultimate disciplinary action may have been unreasonable or inappropriate:[126]

- File example #138: This was an internal discipline complaint where the officer, a recent recruit, had lied to his supervisors to attempt to cover up the fact that he had conducted an incomplete investigation. He also lied about an off duty incident to attempt to place his conduct in a better light. The discipline that was imposed (written reprimand) failed to recognize the seriousness of the recruit officer's conduct. Dismissal ought to have been considered. The form of the letter of reprimand was also arguably too lenient, suggesting only that "further breaches may result in more serious measures." It did not specifically refer to dismissal or even state directly that further misconduct would result in more serious discipline.

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[125] Some cases involved more than one of these disciplinary actions, which accounts for a total greater than thirty.

[126] File example #115, which is referred to above, is also apposite here.

- File example #139: This was a complaint against an officer with numerous past discipline defaults, for which several reprimands and suspensions had been imposed. In this case he had improperly lodged a complaint against another officer who was investigating him for a discipline default. Although the Discipline Authority acknowledged that the Respondent's documented performance history and the latest default provided "sufficient cause...to terminate", the Respondent was neither terminated nor formally disciplined in any way. The officer was permitted to sign a so-called "One Last Chance Agreement", such that any further breaches of discipline resulting in anything above managerial direction would result in termination. Based on the material we reviewed, this seems unduly lenient.

In addition to suggesting the need for some regulation, the frequent use of managerial advice also highlights the need for a more comprehensive database of precedents for police discipline in Canada. While officers in other jurisdictions are governed by different legislation, the issues and elements of conduct are similar and the broader view would provide DA's and the public in this province with confidence that disciplinary actions concerning police misconduct are consistent with decisions in similar circumstances from other jurisdictions.[127]

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[127] The Law Enforcement Review Board in Alberta and the Ontario Civilian Commission on Police Oversight maintain databases of decisions that might be appropriate to consider when attempting to locate data on discipline or corrective measures with which to populate a data base in this jurisdiction.

ANNEX I: LODGED COMPLAINT QUESTIONS

QUESTION

1 ARE THE ALLEGATIONS CLEARLY ARTICULATED IN THE COMPLAINT? IF NOT, WERE EFFORTS MADE TO CLARIFY OR EXPAND UPON THE ALLEGATIONS IN THE COMPLAINT?

2 IF THE COMPLAINT WAS WITHDRAWN PRIOR TO OR DURING INVESTIGATION WERE THERE REASONS TO CONTINUE INVESTIGATING THE COMPLAINT?

3 IF THE COMPLAINT WAS SUMMARILY DISMISSED WAS THAT DONE IN ACCORDANCE WITH S. 54(1)?

4 IF THE COMPLAINT WAS INFORMALLY RESOLVED: WAS IT DONE IN ACCORDANCE WITH THE OPCC'S GUIDELINES FOR INFORMAL RESOLUTION? WAS THAT INAPPROPRIATE IN THE CIRCUMSTANCES? IF SO, WHY WAS IT?

5 DID REPORTS PROVIDED PURSUANT TO S. 56(1) PROVIDE SUFFICIENT DETAIL OF THE PROGRESS OF THE INVESTIGATION?

6 WAS THE INVESTIGATION CONDUCTED IN A TIMELY MANNER?

7 IF THE COMPLAINT INVOLVED AN ALLEGATION OF THE COMMISSION OF AN OFFENCE, WAS AN INVESTIGATION OF THE ALLEGED OFFENCE COMMENCED AND PURSUED IN A TIMELY MANNER?

8 WAS SUFFICENT EVIDENCE OBTAINED DIRECTLY FROM THE COMPLAINANT TO COMPLETE THE INVESTIGATION? IF NOT, WHY NOT?

9 WAS SUFFICIENT EVIDENCE OBTAINED DIRECTLY FROM THE RESPONDENT TO COMPLETE THE INVESTIGATION? IF NOT, WHY NOT?

10 WERE SUFFICENT EFFORTS MADE TO GATHER THE OTHER EVIDENCE NECESSARY TO COMPLETE THE INVESTIGATION? IF NOT, WHY NOT?

11 WAS THE INVESTIGATION REPORT SUBSTANTIALLY COMPLETE? IF NOT, WHAT WAS LACKING?

12 WAS THE INVESTIGATION REPORT OBJECTIVE AND PROFESSIONAL? IF NOT, EXPLAIN.

13 DID THE INVESTIGATION REPORT INCLUDE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS AS REQUIRED UNDER S. 56(6)?

14 BASED ON THE EVIDENCE, WERE THE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE INVESTIGATOR REASONABLE AND APPROPRIATE? IF NOT, WHY NOT?

15 DID THE DISCIPLINE AUTHORITY PROVIDE NOTICE OF THE DETAILS OF THE INVESTIGATION IN ACCORDANCE WITH SECTION 57(1)? IF NOT, EXPLAIN.

16 WAS THE FORM AND CONTENT OF THE NOTICE UNDER S. 57(1) OBJECTIVE AND PROFESSIONAL? IF NOT, EXPLAIN.

17 DID THE DISCIPLINE AUTHORITY ACCEPT THE FINDINGS, CONCLUSIONS, OR RECOMMENDATIONS OF THE INVESTIGATOR? IF SO, WAS IT REASONABLE AND APPROPRIATE TO DO SO? IF NOT WAS IT REASONABLE AND APPROPRIATE NOT TO DO SO?

18 IF AFTER RECEIVING THE INVESTIGATION REPORT THE DISCIPLINE AUTHORITY DETERMINED THAT CORRECTIVE MEASURES WERE WARRANTED WAS THAT DETERMINATION REASONABLE AND APPROPRIATE?

19 IF AFTER RECEIVING THE INVESTIGATION REPORT THE DISCIPLINE AUTHORITY DETERMINED THAT CORRECTIVE MEASURES WERE NOT WARRANTED WAS THAT DETERMINATION REASONABLE AND APPROPRIATE?

20 DID THE DISCIPLINE AUTHORITY PROVIDE NOTICE OF WHETHER CORRECTIVE MEASURES WERE WARRANTED IN ACCORDANCE WITH SECTION 57.1? IF NOT, EXPLAIN.

21 WAS THE FORM AND CONTENT OF THE NOTICE UNDER S. 57.1 OBJECTIVE AND PROFESSIONAL? IF NOT, EXPLAIN.

22 OTHER OBSERVATIONS

ANNEX II: NON-LODGED COMPLAINT QUESTIONS

QUESTION

1 ARE THE ALLEGATIONS CLEARLY ARTICULATED IN THE COMPLAINT? IF NOT, WERE EFFORTS MADE TO CLARIFY OR EXPAND UPON THE ALLEGATIONS IN THE COMPLAINT?

2 DOES THE COMPLAINT DISCLOSE POTENTIAL DISCIPLINARY DEFAULTS FALLING UNDER THE *POLICE ACT*?

3 WERE STEPS TAKEN TO ADVISE THE COMPLAINANT ABOUT AND ASSIST THE COMPLAINANT WITH LODGING A FORM 1 COMPLAINT?

4 WAS THE COMPLAINT INVESTIGATED?

5 IF THE COMPLAINT INVOLVED AN ALLEGATION OF THE COMMISSION OF AN OFFENCE, WAS AN INVESTIGATION OF THE ALLEGED OFFENCE COMMENCED AND PURSUED IN A TIMELY MANNER?

6 HOW WAS THE COMPAINT RESOLVED? WAS THAT APPROPRIATE IN THE CIRCUMSTANCES? IF NOT, WHY WAS IT INAPPROPRIATE?

7 WAS THE OPCC NOTIFIED OF THE MANNER OF RESOLUTION OF THE COMPLAINT?

8 OTHER OBSERVATIONS

APPENDIX D

REPORT ON THE POLICE AWARENESS SURVEY CONDUCTED FOR THE REVIEW OF THE POLICE COMPLAINT PROCESS IN BRITISH COLUMBIA

SUBMITTED BY:

Police Services Division
September 2006

TABLE OF CONTENTS

EXECUTIVE SUMMARY 4

1 INTRODUCTION AND METHODOLOGY 6

2 FINDINGS 10

- 2.1 Confidence with Police Complaint Process 10
- 2.2 Awareness of the Police Complaint Process 12
  - 2.2.1 Knowledge of Part 9 12
  - 2.2.2 Education and Training 21
- 2.3 Experience with the Police Complaint Process 25
  - 2.3.1 Timely, Unbiased, and with Due Diligence: Internal Versus External 25
  - 2.3.2 Disciplinary Measures 30
  - 2.3.3 Direct Involvement 32
  - 2.3.4 Timely, Unbiased, and with Due Diligence: Specific Complaint 34
- 2.4 Awareness of the OPCC 38
  - 2.4.1 Awareness of OPCC 38
  - 2.4.2 Contact with OPCC 39
  - 2.4.3 Confidence with OPCC 40
- 2.5 Analysis of Comments 42
  - 2.5.1 Strengths of the Existing Process 42
  - 2.5.2 Weaknesses of the Existing Process 45

3 CONCLUSION 49

ANNEX I: INVITATION AND QUESTIONNAIRE 50

ANNEX II: COMPARISON OF POPULATION TO RESPONDENT GROUP 58

ANNEX III: OVERALL RESULTS TABLES 59

EXECUTIVE SUMMARY

As part of the review of the police complaint process, Police Services Division implemented a police awareness survey across the province's 11 municipal police departments. The purpose of this research was to:

- Measure awareness amongst municipal police officers of the existing process for handling complaints against the police;
- Measure police satisfaction with the complaints process; and
- Provide an opportunity for the police complaints review team to understand some of the issues surrounding police awareness of the process for handling public complaints against the police.

The email invitation was sent to every sworn member across the 11 departments (N=2,245) on October 20, 2005. After a total of seven email requests to participate, the survey was closed February 24, 2006, with an overall response rate of 57% (n=1,270) and a 51% or greater response rate for each department.

The major findings of this survey are as follows:

- **Confidence:** Half of all participants (49%) reported that they are confident or very confident with the existing process for handling complaints against the police. In comparison, 30% provided neutral responses, and 21% said that they were not very confident or not confident at all.
- **Part 9:** Participants were asked a series of questions regarding their knowledge of Part 9 of the Police Act. In general, less than half (44%) reported that they had read Part 9, and more than two-thirds of the participants were correct in their assessment of the protections and obligations outlined in Part 9 of the Police Act.
    - Overall, those with fewer years of service were more likely to indicate "don't know" to the questions on Part 9, compared to other years of service groupings. As well, evidence suggests that the more years of service one has, the more likely they were to select "yes" to the Part 9 questions.
- **Training:** Participants were asked if the training they had received was sufficient to understand their role in the complaints process. Overall, 21% said "yes," 43% said "somewhat," and 35% reported that the training was not sufficient. Three-quarters (72%) noted that they would like to receive additional information or training regarding the complaints process.
    - Groups most likely to state that they would like to receive additional information and training regarding the complaints process included Professional Standards investigators (82%), those in administrative assignments (79%), Executives and Staff Sergeants (each at 76%), and Constables (72%).

- **Internal versus External Investigations:** Overall, participants believed investigations into complaints conducted by internal investigators were more timely, unbiased, and thorough than those conducted by external investigators. Roughly three-quarters (69% to 79%) of all participants rated internal investigations as having those characteristics, while approximately one-third (30% to 38%) described external investigations in the same manner.
- **Disciplinary Measures:** Less than half (46%) of all participants believed that disciplinary measures with regard to complaints against the police were applied consistently within their department. More than half (58%) reported that disciplinary measures were of an appropriate level (i.e., not too harsh or too lenient).
- **Direct Involvement:** 54% of all participants had been approached by a member of the public in regard to making a complaint against the department or a police officer employed within the department. Four in ten (40%) participants had been named as respondents, 20% had been a witness in a complaint investigation, and 52% indicated that they had never been involved.
  - Those who had been involved as either a respondent or witness in the past two years indicated that the most recent investigation was conducted with due diligence (86%), without bias (83%) and in a timely manner (75%).
- **Awareness of the Office of the Police Complaint Commissioner (the "OPCC"):** A majority (89%) of participants indicated that they were aware of the role of the OPCC. Although 40% have been involved in the process as respondent officers, less than a quarter (23%) of all participants reported having been in contact with the Office.
- **Confidence in the OPCC:** Overall, less than a quarter of participants reported confidence with the performance of the OPCC (23%), while 37% provided a neutral rating and 40% stated that they were not confident.
- **Strengths of the Existing Process:** Responses to this open-ended question suggest that at least half (47%) of all officers were generally satisfied with the quality of investigations and internal investigators; 32% reported their belief that having police investigators who are aware of the complexities of policing was a benefit to the complaints process; and 20% pointed to the existing structure and process as a benefit in and of itself.
- **Weaknesses of the Existing Process:** Comments provided to this open-ended question reveal that at least one-third (32%) of officers feel it is too easy to make a frivolous (or groundless) complaint; one-quarter (24%) were critical of the OPCC; one-quarter (23%) noted that the process is subject to public and political sway; and 20% reported that the process is not timely, consistent or fair.

1 INTRODUCTION AND METHODOLOGY

As part of the review of the police complaint process, Police Services Division contracted with BC Stats to implement a police awareness survey across the province's 11 municipal police departments. The purpose of this research was to:

- Measure awareness amongst municipal police officers of the existing process for handling complaints against the police;
- Measure police satisfaction with the complaints process; and
- Provide an opportunity for the police complaints review team to understand some of the issues surrounding police awareness of the process for handling public complaints against the police.

This survey was administered by BC Stats in an on-line format whereby each sworn member received an email invitation containing a link to complete the electronic survey. Email addresses were obtained from each of the departments Information Technology or Human Resources units. The invitations informed members of the confidentiality provisions, provided directions for electronic submission of their completed surveys, and provided contact information for both BC Stats and the Police Complaints Review Team. Please see Annex I for a copy of the invitation and questionnaire.

On October 4, 2005, the Police Complaints Review Team conducted a pre-test of 20 randomly selected sworn members from Abbotsford Police Department. These members were requested to complete the pilot survey and provide feedback regarding the questionnaire. These members were not excluded from the final research.

After making minor changes to the questionnaire, an email invitation was sent to every sworn member across the 11 departments (N=2,245) on October 20, 2005. Members were requested to respond by November 14, 2005. Follow-up reminders were sent to those who had yet to respond on October 31 and November 7, 2005. As response rates fell below expectations, an extension letter was emailed on November 15, which mirrored the original invitation and requested further response. Follow-up reminders were also sent on November 29 and December 6. The survey was left open through January and February, 2006, and a final reminder was sent to all members who had yet to respond on February 13, 2006.

After a total of seven email requests to participate, the survey was closed February 24, 2006, with an overall response rate of 57% and a 51% or greater response rate for each department. See Table 1 for a breakdown of response rates by department; and Tables 2 and 3 for a breakdown of response rates by rank group and assignment.

The number of completed surveys, 1,270, yields a margin of error of ±2.8 percentage points at the 95% confidence level on the key question, "How would you rate your level of confidence with the overall process for handling complaints against police?" Forty-nine percent responded "Very confident" or "Confident". This means that if this survey was repeatedly administered, between 46.3% and 51.7% of participants would be confident with the police complaint process, 19 times out of 20.

Table 1: Response Rates by Department

Department	Total Population[1]	# Submit	Response Rate
Oak Bay	22	20	91%
Central Saanich	23	20	87%
West Vancouver	75	58	77%
Victoria	225	160	71%
Saanich	163	108	66%
Abbotsford	167	101	60%
Nelson	16	9	56%
Port Moody	42	22	52%
New Westminster	112	58	52%
Delta	147	77	52%
Vancouver	1,253	637	51%
TOTAL	**2,245**	**1,270**	**57%**

Reasons for non-response may include some members being on extended leave for the duration of the survey, being seconded to an integrated unit or the RCMP, still being in recruit or block training, believing that access to the Internet to fill out the survey was not available (even though access had been set up by department technical staff), short-term technical difficulties, lack of knowledge/personal experience with the process, or lack of interest in the survey.

Table 2: Response Rates by Rank Group

Rank Group	Total Population	# Submit	Response Rate
Staff Sergeant	32	29	91%
Executive	24	21	88%
Superintendent / Inspector	62	54	87%
Corporal	10	8	80%
Sergeant	299	225	75%
Detective	28	21	75%
Constable	1,790	912	51%
TOTAL	**2,245**	**1,270**	**57%**

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[1] Population numbers were provided to the Police Complaints Review team by each department. The original lists included 2,319 members; 74 members were removed from the list for various reasons including staff turnover, retirement, extended leave, and long-term secondments. Thus, the total population of sworn officers at the end of the data collection period was 2,245.

Table 3: Response Rates by Assignment

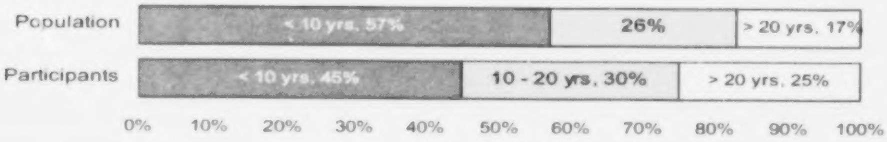
Assignment	Total Population[2]	# Submit	Response Rate
Professional Standards / Internal Investigations	15	17	113%
Other Assignments	49	53	108%
Investigations	371	264	71%
General Duty / Patrol	1,063	611	57%
Community Policing / Youth Liaison	93	52	56%
Administration	60	28	47%
Corporate Functions	169	78	46%
Targeted Enforcement	369	151	41%
New Recruit / Block Training	95	16	17%
TOTAL		**1,270**	**57%**

Regardless of response rates, the proportions of those who did submit a completed survey closely represented the overall population within each department. See Annex II for a comparison of demographics within the overall population to those of the participant group.

Participant demographics show that 50% of all responses were submitted by members within Vancouver Police Department. Participant demographics also showed that 72% were Constables and 18% Sergeants. Just under half of all survey participants (48%) were in General Duty / Patrol assignments, 21% in Investigations, and 12% were assigned to Targeted Enforcement Teams. One-quarter (27%) of all participants had less than five years of service and, cumulatively, almost half (45%) had less than ten years of service.

These rates were similar to the overall makeup of municipal members, with the exception of years of service groupings, where 38% of the population had less than five years of service and 57% had less than ten. The average years of service for members across the departments were 11 years. Please see Figure 1 and Table 4 for further information on participant demographics.

Figure 1: Years of Service Comparisons.



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[2] Population numbers are based on information provided to the Police Complaints Review team by each department. Members who completed the survey were also asked to indicate their current assignment. Response rates (e.g., 113%) reflect inconsistencies between the list provided by each department and members' self reports.

Table 4: Participant Demographics: Department, Rank Group, Assignment, and Years of Service

DEPARTMENT	# of Participants	% of Participants
Vancouver	637	50%
Victoria	160	13%
Saanich	108	9%
Abbotsford	101	8%
Delta	77	6%
West Vancouver	58	5%
New Westminster	58	5%
Port Moody	22	2%
Central Saanich	20	2%
Oak Bay	20	2%
Nelson	9	1%

RANK GROUP		
Constable	912	72%
Sergeant	225	18%
Superintendent / Inspector	54	4%
Staff Sergeant	29	2%
Executive	21	2%
Detective	21	2%
Corporal	8	1%

ASSIGNMENT		
General Duty / Patrol	611	48%
Investigations	264	21%
Targeted Enforcement Teams	151	12%
Other Assignments	53	4%
Corporate Functions	78	6%
Community Policing / Youth Liaison	52	4%
Administration / Document Services / Prime	28	2%
Professional Standards	17	1%
New Recruit / Block Training	16	1%

YEARS OF SERVICE[3]		
Less than 5 years	338	27%
6 to 10 years	230	18%
11 to 15 years	168	13%
16 to 20 years	218	17%
21 to 25 years	168	13%
Greater than 25 years	146	11%
TOTAL	**1,268**	**100%**

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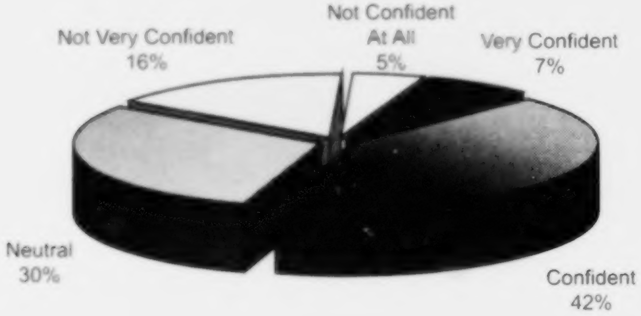
[3] Two members did not respond to this question.

2 FINDINGS

2.1 CONFIDENCE WITH POLICE COMPLAINT PROCESS

Slightly less than half of all participants (49%) reported confidence with the existing process for handling complaints against the police. In comparison, three in ten provided neutral responses when asked this key question, while roughly one in five said that they were not very confident or not confident at all. Please see Figure 2.

Figure 2: Confidence with the Police Complaint Process



Groups most likely to report confidence in the process were Executives, Sergeants, and Staff Sergeants; 76% of each group reported that they were confident or very confident. Similarly, the majority of those in Professional Standards, those assigned to Corporate Functions, and those with more than 25 years of service also reported confidence (88%, 64% and 66%, respectively). Only 36% of members assigned to target enforcement teams reported that they were confident or very confident with the existing police complaint process. Please see Tables 5 through 7 for further detail.

Table 5: Confidence in the Overall Police Complaint Process by Rank Group

Rank Group	# of Participants	% Confident & Very Confident	% Neutral	% Not Very Confident & Not At All	# Don't Know
Constable	912	44%	33%	22%	77
Sergeant	225	55%	26%	19%	4
Superintendent / Inspector	54	76%	13%	11%	
Staff Sergeant	29	76%	10%	14%	
Executive	21	76%	14%	10%	
Corporal / Detective	29	54%	29%	18%	1
TOTAL	**1,270**	**49%**	**30%**	**21%**	**82**

Table 6: Confidence in the Overall Police Complaint Process by Assignment

Assignment	# of Participants	% Confident & Very Confident	% Neutral	% Not Very Confident & Not At All	# Don't Know
General Duty / Patrol	611	47%	34%	20%	58
Investigations	264	55%	24%	21%	5
Targeted Enforcement Teams	151	36%	37%	27%	8
Other Assignments	53	47%	23%	30%	
Corporate Functions	78	64%	18%	18%	
Community Policing / Youth Liaison	52	46%	35%	19%	4
Administration / Document Services / Prime	28	58%	31%	12%	2
Professional Standards	17	88%	12%	-	
New Recruit / Block Training	16	64%	27%	9%	5
TOTAL	**1,270**	**49%**	**30%**	**21%**	**82**

Table 7: Confidence in the Overall Police Complaint Process by Years of Service

Years of Service	# of Participants	% Confident & Very Confident	% Neutral	% Not Very Confident & Not At All	# Don't Know
Less than 5 years	338	45%	39%	16%	55
6 to 10 years	230	41%	37%	22%	7
11 to 15 years	168	51%	25%	24%	9
16 to 20 years	218	51%	23%	26%	6
21 to 25 years	168	50%	28%	22%	3
Greater than 25 years	146	66%	20%	14%	2
TOTAL	**1,268**	**49%**	**30%**	**21%**	**82**

Elements that contribute to police confidence will be discussed throughout the following sections regarding awareness of and experience with the police complaint process, awareness of and confidence in the Office of the Police Complaint Commissioner (the "OPCC"), and discussion on issues such as police investigating police and the strengths and weaknesses of the current complaints process.

2.2 AWARENESS OF THE POLICE COMPLAINT PROCESS

Findings throughout this section reveal that education and awareness need to improve in order for sworn members to adequately understand their rights and responsibilities in the handling of public complaints against the police.

Where to Make a Complaint

Participants were asked where they might direct a member of the public who wishes to make a complaint against the department or a police officer employed within the department. Overall, 87% of participants noted that complaints can be addressed through the senior officer on duty – the number one option selected by all departments, and across all demographic groups. The OPCC and the internal Professional Standards Unit were second and third most commonly selected options, with the Chief and Discipline Authority following. Other locations where participants noted that a public complaint can be addressed include by any officer, any supervisor, the department's public service counter, and by telephone, web or email. Please see Table 8.

Table 8: Where a Member of the Public Can Make a Complaint

Location	%
Senior Officer	87%
OPCC	81%
Professional Standards Unit	80%
Chief	76%
Discipline Authority	60%
Other	12%

The variety of locations available to complainants for lodging complaints against the police was noted in open-ended comments as a strength of the existing process. Participants felt that the system afforded flexibility to complainants and that easy access allows complainants the opportunity to have all complaints taken seriously.

2.2.1 KNOWLEDGE OF PART 9

Officers were asked a series of questions to test their knowledge regarding their rights and responsibilities under Part 9 of the *Police Act*. Questions included the following topics: confidential complaints; withholding information; providing statements; answering questions; testifying; withdrawn complaints; and whether or not they have read Part 9 or the department's policies and procedures with regard to public complaints against the police. In general, more than two-thirds of the 1,270 participants were correct in their assessment of the protections and obligations outlined in Part 9 of the *Police Act*. Please see Table 9.

Table 9: Overall Knowledge Results

Knowledge Questions	% Yes	% No	% Don't Know
Can you, as a police officer, make a confidential complaint to the Police Complaint Commissioner regarding the misconduct of any other police officer?	67%	5%	28%
During investigation, can information about the complaint be withheld from the respondent officer if the Police Complaint Commissioner or the Discipline Authority believes that disclosure would compromise investigation?	58%	10%	31%
Are respondent officers required to provide investigators with a statement outlining their own version of events?	58%	33%	9%
Are witness officers required to meet with investigators and answer their questions?	70%	16%	14%
Are witness officers required to testify (if requested by an adjudicator) at public hearings and inquiries into complaints against the police?	75%	5%	20%
Can an investigation take place, even if the complainant has withdrawn their complaint?	86%	2%	12%
Have you ever read Part 9 of the Police Act regarding complaints against the police?	44%	28%	28%
Have you ever read your department's policies and procedures with regard to complaints against the police?	69%	18%	13%

Overall, those with fewer years of service (e.g., less than five years, and five to ten years of service) were more likely to respond "don't know" to the above items, compared to other years of service groupings. As well, evidence suggests that the more years of service one has, the more likely they were to select "yes" to the above questions. Discussion of the above findings regarding knowledge questions follows below.

Confidential Complaints

The question regarding whether or not an officer can make a confidential complaint to the Police Complaint Commissioner is discussed in section 65.1 (1) of the *Police Act*, whereby the *Act* states:

> 65.1 (1) Municipal Constables are entitled to report to the police complaint commissioner the alleged misconduct of any other municipal constable, including the alleged misconduct of a Chief constable or a deputy Chief constable, if the conduct in question could be the subject matter for a public trust complaint or an internal discipline complaint.

Overall, 67% of all participants responded correctly to this question. Only five percent (5%) responded incorrectly. Compared to the other knowledge questions, a relatively high proportion of participants indicated that they did not know the answer (28%). See Table 9 above. When comparing responses to this question by demographic groupings, there did not appear to be any large differences between groups. The general trend regarding increased years of service and increased knowledge is evident. The groups most likely to report that police officers *can* make confidential complaints were the Professional Standards investigators (100%), Staff Sergeants (97%), and Executives (95%). Please see Table 10.

Withholding Information

Participants were asked whether information about a complaint can be withheld from a respondent officer if it is believed that disclosure would compromise investigation; 58% said "yes," 10% said "no," and 31% indicated that they did not know how to respond. Section 52.1 (3) of the *Act*, states:

> 52.1(3) Within 10 business days after making a decision on characterization …the recipient must also provide notice to the respondent that the complaint has been lodged unless the recipient determines that notification could jeopardize an investigation into the complaint.

As with other knowledge questions, the percent of participants who indicated that complaints *can* be withheld from respondents rose with years of service. Consistent with higher years of service, the groups most likely to answer this question correctly included Staff Sergeants (97%) and department Executive (95%). As well, those assigned to Professional Standards were more likely than other assignments to respond correctly (94%). Please see Table 11.

Table 10: Knowledge of Confidential Complaints by Demographic Grouping

Confidential Complaints	% Yes	% No	% Don't Know
Constables	61%	6%	33%
Corporals / Detectives	72%	3%	24%
Executive	95%	5%	0%
Superintendent / Inspector	81%	7%	11%
Sergeant	78%	4%	18%
Staff Sergeant	97%	-	3%
Corporate Functions	72%	6%	22%
Administration / Document Services / Prime	79%	-	21%
Professional Standards / Internal Investigations	100%	-	-
Investigations	63%	3%	34%
Targeted Enforcement Teams	66%	8%	26%
General Duty / Patrol	65%	6%	29%
Community Policing / Youth Liaison	69%	8%	23%
New Recruit / Block Training	69%	6%	25%
Other Assignments	75%	2%	23%
Less than 5 years	62%	5%	33%
6 to 10 years	57%	7%	35%
11 to 15 years	61%	3%	36%
16 to 20 years	71%	6%	23%
21 to 25 years	74%	5%	20%
Greater than 25 years	84%	5%	12%
Total	**67%**	**5%**	**28%**

Table 11: Knowledge of Withholding Information by Demographic Grouping

Withholding Information	**% Yes**	**% No**	**% Don't Know**
Constables	49%	13%	38%
Corporals / Detectives	86%	3%	10%
Executive	95%	-	5%
Superintendent / Inspector	85%	2%	13%
Sergeant	78%	5%	17%
Staff Sergeant	97%	-	3%
Corporate Functions	77%	8%	15%
Administration / Document Services / Prime	79%	4%	18%
Professional Standards / Internal Investigations	94%	6%	-
Investigations	64%	8%	28%
Targeted Enforcement Teams	59%	8%	33%
General Duty / Patrol	50%	14%	36%
Community Policing / Youth Liaison	71%	6%	23%
New Recruit / Block Training	50%	-	50%
Other Assignments	66%	8%	26%
Less than 5 years	38%	14%	47%
6 to 10 years	47%	16%	37%
11 to 15 years	59%	14%	27%
16 to 20 years	72%	7%	21%
21 to 25 years	75%	4%	21%
Greater than 25 years	82%	2%	16%
Total	**58%**	**10%**	**31%**

Compellability of Statements

Section 5 (1) of the OPCC Practice Directive on Statements by Police Officers (October 24, 2000) states:

> 5 (1) A respondent police officer in respect of whom an investigation is being carried out may, on a voluntary basis, provide the investigator with a statement setting out their version of the subject-matter of the complaint.

When asked if respondent officers are *required* to provide investigators with a statement outlining their own version of events, one-third of all participants (33%) said "no," 58% said "yes," and 9% stated that they did not know. This knowledge question yielded the smallest proportion of participants indicating that they do not know the correct answer, which may be indicative of firm opinions regarding compellability, knowledge of departmental policies, or having engaged in discourse regarding the topic. It is interesting to note, however, that there has been discussion between the OPCC and the departments regarding the compellability of statements, but at present, no such legislation exists.

Corporals and Detectives comprised the rank group with the most members (79%) who reported that respondent officers are required to provide their statement of events. By assignment, those in Professional Standards and Administration were the least likely to agree with the question, with 29% and 36% who noted that officers are not required to provide statements. There were no major differences when comparing results by years of service. See Table 12.

Table 12: Knowledge of the Compellability of Statements by Demographic Grouping

Compellability of Statements	% Yes	% No	% Don't Know
Constables	58%	30%	12%
Corporals / Detectives	79%	21%	-
Executive	57%	43%	-
Superintendent / Inspector	52%	46%	2%
Sergeant	58%	42%	-
Staff Sergeant	62%	31%	7%
Corporate Functions	62%	35%	4%
Administration / Document Services / Prime	36%	61%	4%
Professional Standards / Internal Investigations	29%	71%	-
Investigations	59%	35%	6%
Targeted Enforcement Teams	59%	36%	5%
General Duty / Patrol	60%	28%	12%
Community Policing / Youth Liaison	58%	31%	12%
New Recruit / Block Training	50%	31%	19%
Other Assignments	49%	42%	9%
Less than 5 years	61%	23%	16%
6 to 10 years	57%	33%	10%
11 to 15 years	58%	34%	8%
16 to 20 years	56%	41%	3%
21 to 25 years	55%	41%	4%
Greater than 25 years	62%	33%	5%
Total	**58%**	**33%**	**9%**

Open-ended comments revealed that views regarding compellability of statements are mixed – a few participants pointed to a need for compellability and for timelines to be clarified regarding duty reports, while others pointed to potentially negative aspects of compellability, including use of statements in court proceedings, negative inferences drawn if officers do not provide statements, and a general need for clarification of this section of the *Act* in order to avoid further confusion.

Compellability of Witness Officers

Participants were asked if witness officers are *required* to meet with investigators and answer their questions. Section 6 of the OPCC Practice Directive on Statements by Police Officers (October 24, 2000) states:

> 6 Within a reasonable time upon being requested to be interviewed by an investigator, a police officer who might reasonably have knowledge of matters pertaining to a complaint or report shall meet with the investigator and answer all questions.

Seven out of ten participants (70%) indicated that witness officers must comply, while 16% reported that witnesses are not required to meet with investigators and 14% stated that they did not know. By demographic grouping, Constables, New Recruits, and those with less than five years of service were more likely to indicate that they did not know the correct answer (17%, 19% and 26%, respectively). The percent of officers providing affirmative answers increased with years of service. Corporals and Detectives comprised the rank group most likely to state that witnesses are required to meet with investigators (90%), and Professional Standards investigators were more likely than any other assignment group to respond in the same manner (94%). Please see Table 13.

Open-ended comments regarding compellability of witness officers pointed to a need to clarify the legislation surrounding a witness' duties in the process and the amount of stress witness officers experience when compelled to respond to investigators' questions.

Table 13: Knowledge of Compellability of Witness Officers by Demographic Grouping

Compellability of Witness Officers	% Yes	% No	% Don't Know
Constables	65%	18%	17%
Corporals / Detectives	90%	3%	7%
Executive	76%	24%	-
Superintendent / Inspector	87%	9%	4%
Sergeant	83%	12%	5%
Staff Sergeant	72%	21%	7%
Corporate Functions	83%	12%	5%
Administration / Document Services / Prime	71%	25%	4%
Professional Standards / Internal Investigations	94%	6%	-
Investigations	71%	18%	11%
Targeted Enforcement Teams	73%	16%	11%
General Duty / Patrol	65%	18%	17%
Community Policing / Youth Liaison	77%	8%	15%
New Recruit / Block Training	69%	13%	19%
Other Assignments	85%	8%	8%
Less than 5 years	55%	18%	26%
6 to 10 years	63%	24%	13%
11 to 15 years	77%	11%	12%
16 to 20 years	80%	13%	7%
21 to 25 years	80%	14%	5%
Greater than 25 years	81%	14%	5%
Total	**70%**	**16%**	**14%**

Compellability to Testify

Participants were asked whether witness officers are *required* to testify at public hearing and during inquiries into complaints. Three-quarters (75%) of all participants said "yes," 5% said "no," and 20% did not know how to respond. Section 61.1 (2) and (3) of the *Police Act* stipulate that:

> 61.1 (2) Subject to the law of privilege, all witnesses, including, without limitation, municipal Constables other than the respondent, are compellable at proceedings under this Part.
>
> (3) Municipal constables, chief constables and deputy chief constables may be compelled to make statements
>
> (a) in internal discipline proceedings, and
>
> (b) at public hearings and inquiries under this Act.

Just over half (57%) of participants with less than five years of service responded to this question correctly – more than a third (36%) of this group reported that they did not know the answer. Knowledge about the compellability of witnesses increased with each years of service grouping; 90% of those with greater than 25 years of service provided the correct response. By rank, those from Sergeant ranks and above were more likely to say that witnesses can be compelled to testify. By assignment, those in Professional Standards and Corporate Functions (94% each) were more likely to respond correctly. Please see Table 14.

Table 14: Knowledge of Compellability to Testify by Demographic Grouping

Compellability to Testify	% Yes	% No	% Don't Know
Constables	69%	6%	25%
Corporals / Detectives	83%	7%	10%
Executive	86%	14%	0%
Superintendent / Inspector	96%	2%	2%
Sergeant	88%	4%	8%
Staff Sergeant	93%	0%	7%
Corporate Functions	94%	4%	3%
Administration / Document Services / Prime	86%	7%	7%
Professional Standards / Internal Investigations	94%	0%	6%
Investigations	81%	4%	15%
Targeted Enforcement Teams	74%	7%	19%
General Duty / Patrol	70%	6%	25%
Community Policing / Youth Liaison	67%	6%	27%
New Recruit / Block Training	69%	0%	31%
Other Assignments	81%	4%	15%
Less than 5 years	57%	7%	36%
6 to 10 years	68%	7%	25%
11 to 15 years	82%	2%	16%
16 to 20 years	86%	4%	10%
21 to 25 years	86%	7%	7%
Greater than 25 years	90%	3%	8%
Total	**75%**	**5%**	**20%**

As above with the issue of compellability of witness to respond to investigators' questions, participants have noted that it is stressful for witnesses to be forced to testify against other officers, stating that the process creates animosity and a confrontational atmosphere.

Withdrawal of Complaints

When asked if an investigation can still take place even if the complainant has withdrawn their complaint, 86% of all participants responded correctly by indicating "yes". Sections 52.2 (1), (5), (6), and (7) of the *Act* state:

> 52.2 (1) A complainant who wishes to withdraw a complaint that the complainant has lodged may at any time file a written notice of withdrawal with the discipline authority or the police complaint commissioner, or both. (5) If ...withdrawal was made under duress, the police complaint commissioner must order the discipline authority to conduct an investigation.... (6) If ...not made under duress, the police complaint commissioner may provide directions to the discipline authority... [which] (7) ...may, without limitation, include directions that the discipline authority conduct an investigation into any or all of the allegations in the complaint.

All rank groupings of participant officers had at least 95% of members noting that investigations may continue in the event of withdrawal, with the exception of Constables, where 82% responded correctly. No major differences were found when comparing assignment groups. Knowledge about continuing investigations rises with years of service. Please see Table 15.

Table 15: Knowledge of Withdrawal of Complaints by Demographic Grouping

Withdrawn Complaints	**% Yes**	**% No**	**% Don't Know**
Constables	82%	3%	15%
Corporals / Detectives	100%	-	-
Executive	100%	-	-
Superintendent / Inspector	98%	-	2%
Sergeant	95%	-	5%
Staff Sergeant	100%	-	-
Corporate Functions	92%	1%	6%
Administration / Document Services / Prime	93%	-	7%
Professional Standards / Internal Investigations	94%	-	6%
Investigations	88%	2%	11%
Targeted Enforcement Teams	91%	3%	6%
General Duty / Patrol	82%	2%	16%
Community Policing / Youth Liaison	85%	-	15%
New Recruit / Block Training	88%	-	13%
Other Assignments	94%	2%	4%
Less than 5 years	76%	3%	22%
6 to 10 years	84%	3%	13%
11 to 15 years	88%	2%	10%
16 to 20 years	93%	2%	5%
21 to 25 years	92%	-	8%
Greater than 25 years	95%	-	5%
Total	**86%**	**2%**	**12%**

Reading Part 9

Less than half of all participants stated that they had read Part 9 of the *Police Act* regarding complaints against the police. Just over a quarter (28%) stated that they had not, and the same number (28%) indicated that they did not know.

By rank, Staff Sergeants and Executive were most likely to state that they had read Part 9 (76% each), while Constables were least likely (36%). A full 100% of Professional Standards staff indicated that they had read Part 9 and 75% of New Recruits indicated that they had also done so. Those in Targeted Enforcement Teams were most likely to indicate that they had not read Part 9 (43%). By years of service, an equal number of those with less than five years reported having read Part 9 (37%) as those that did not know. Those with six to ten years of experience were the most likely to indicate that they have not read this part of the *Act* (40%); otherwise, the percent of those who have read Part 9 increases with years of service. Please see Table 16.

Table 16: Reading Part 9 by Demographic Grouping

Reading Part 9	% Yes	% No	% Don't Know
Constables	36%	33%	31%
Corporals / Detectives	52%	10%	38%
Executive	76%	5%	19%
Superintendent / Inspector	74%	9%	17%
Sergeant	62%	20%	19%
Staff Sergeant	76%	14%	10%
Corporate Functions	56%	17%	27%
Administration / Document Services / Prime	54%	18%	29%
Professional Standards / Internal Investigations	100%	-	-
Investigations	45%	30%	25%
Targeted Enforcement Teams	34%	43%	23%
General Duty / Patrol	41%	28%	32%
Community Policing / Youth Liaison	40%	33%	27%
New Recruit / Block Training	75%	13%	13%
Other Assignments	58%	17%	25%
Less than 5 years	37%	27%	36%
6 to 10 years	32%	40%	28%
11 to 15 years	44%	30%	26%
16 to 20 years	49%	27%	24%
21 to 25 years	57%	23%	21%
Greater than 25 years	58%	21%	21%
Total	**44%**	**28%**	**28%**

General comments regarding the *Police Act* pointed to the cumbersome and, at times, conflicting language used throughout the legislation. Some participants stated that it is difficult to follow the *Act* because the process is complicated and creates administrative burden, while others noted that they found the language of disciplinary defaults to be insulting. Other officers pointed to the *Police Act* as a benefit of the existing process, citing that it provides a structured outline for all municipal departments to follow.

Department Policies and Procedures

Officers were also asked whether or not they have read their department's policies and procedures with regard to complaints against the police; more than two-thirds (69%) reported having done so.

Apart from Constables, where 60% noted that they had read the department's policies and procedures, at least 90% of all other groups had read the documents. By assignment, 100% of Professional Standards investigators have read the policies and procedures, followed by 93% of Administration staff and 92% of those in Corporate Functions. Just over half (56%) of New Recruits who participated in the survey said that they had done so as well. By years of service, participants were more likely to have read their department's policies and procedures the longer they had been employed as a police officer: less than half (49%) of those with less than five years of experience had read the documents, while 84% to 86% of those with 16 or more years of service reported that they had. Please see Table 17.

Table 17: Department Policies and Procedures by Demographic Grouping

Department Policies and Procedures	% Yes	% No	% Don't Know
Constables	60%	23%	17%
Corporals / Detectives	97%	-	3%
Executive	95%	5%	-
Superintendent / Inspector	98%	2%	-
Sergeant	90%	6%	4%
Staff Sergeant	93%	7%	-
Corporate Functions	92%	5%	3%
Administration / Document Services / Prime	93%	4%	4%
Professional Standards / Internal Investigations	100%	-	-
Investigations	74%	16%	10%
Targeted Enforcement Teams	65%	25%	10%
General Duty / Patrol	62%	21%	17%
Community Policing / Youth Liaison	75%	13%	12%
New Recruit / Block Training	56%	25%	19%
Other Assignments	83%	6%	11%
Less than 5 years	49%	29%	22%
6 to 10 years	59%	24%	17%
11 to 15 years	78%	14%	8%
16 to 20 years	84%	11%	6%
21 to 25 years	86%	9%	5%
Greater than 25 years	84%	8%	8%
Total	**69%**	**18%**	**13%**

2.2.2 EDUCATION AND TRAINING

Training Received

Training and awareness issues identified by participants in open-ended questions included:

1. A need for additional training and hands-on experience for investigators with regard to interviewing and interrogation skills; knowledge of the *Police Act*, and how to conduct parallel investigations;
2. Ongoing training for supervisors with regard to the steps of the process; and
3. Continued education for all sworn members, whether at roll call or in seminars, regarding the *Police Act* process and consequences, ethics training in general, and ongoing information regarding changes to policies or procedures surrounding the handling of complaints.

The majority (91%) of participants indicated that they had received at least some training with respect to the Police Complaint Process. Overall, the majority of sworn members received training regarding the complaints process during recruit training (63%), from the in-service courses at the Justice Institute (27%), during department orientation (39%), and/or through department directives (34%). See Table 18.

Table 18: Overall Training Received

Type of Training		% Yes
What type of training have you received with regard to the Police Complaint Process?		
	Recruit Training	63%
	In-service courses (i.e., JIBC Police Academy)	27%
	Department Orientation	39%
	Department Directives/Standing Orders	34%
	Special workshops/lectures (e.g., from OPCC)	16%
	Other (Union training, promotional or increment exams, personal experience, agent's course, team training, personal interest, previous experience in internal investigations, conference or workshop attendance, and word of mouth)	14%
	No Training	9%

These results are better explained when considering that Constables and those with less than five years of service comprise roughly 50% of all participants. By rank, Constables were most likely to have received training regarding the complaints process during recruit training (72%) and through department orientation (37%), while the majority of other ranks received their information from in-service courses offered at the Justice Institute, through department directives and standing orders, and/or from the OPCC. See Table 19.

Table 19: Training Received by Rank

Rank	Recruit Training	In-Service Courses	Department Orientation	Department Directives/ Standing Orders	OPCC	Other	Have not received any training
Constables	72%	20%	37%	23%	6%	13%	10%
Corporals / Detectives	55%	38%	24%	52%	21%	28%	3%
Executive	38%	67%	29%	67%	71%	5%	-
Superintendent / Inspector	37%	72%	63%	74%	72%	20%	-
Sergeant	41%	37%	42%	60%	34%	21%	7%
Staff Sergeant	17%	41%	45%	59%	59%	3%	3%
Total	**63%**	**27%**	**39%**	**34%**	**16%**	**14%**	**9%**

By years of service, those with 15 years or less were more likely to have received training during their recruit training than through any other method. This trend decreased with years of service. In contrast, those with 16 years of service or greater were most likely to have received their training through department directives or standing orders, which increased by years of service (as does receiving in-service training and training from the OPCC). See Table 20.

Other methods through which training was received included from the union, through studying for promotional exams, from personal experience, and through agent courses.

Table 20: Training Received by Years of Service

Years of Service	Recruit Training	In-Service Courses	Department Orientation	Department Directives/ Standing Orders	OPCC	Other	Have not received any training
Less than 5 years	89%	15%	33%	6%	2%	7%	6%
6 to 10 years	77%	20%	36%	20%	6%	14%	11%
11 to 15 years	61%	27%	42%	42%	11%	22%	10%
16 to 20 years	47%	34%	43%	50%	22%	18%	11%
21 to 25 years	38%	33%	47%	59%	36%	17%	7%
Greater than 25 years	38%	45%	40%	61%	40%	16%	9%
Total	**63%**	**27%**	**39%**	**34%**	**16%**	**14%**	**9%**

Training Sufficient to Understand Role

Participants were asked if the training they had received was sufficient to understand their role in the complaints process. Overall, 21% said "yes," 43% said "somewhat," and 35% reported that the training was not sufficient. Three-quarters (72%) noted that they would like to receive additional information or training regarding the complaints process.

Staff Sergeants, Executives, and Superintendents/Inspectors were most likely to report that the training was sufficient to understand their role in the complaints process (48%, 48% and 52%, respectively). Constables were most likely to say it was not sufficient (41%). By assignment, Professional Standards investigators were most likely to say that the training was sufficient (53%), followed by New Recruits at 31%. New Recruits were also fairly evenly split as to whether the training was sufficient, somewhat sufficient, or not sufficient (31%, 31% and 38% respectively). By years of service, the likelihood of judging training as sufficient generally tended to increase over time, however, 26% to 42% of all years of service groupings noted that the training they had received was not sufficient. Please see Table 21.

The groups most likely to state that they would like to receive additional information and training regarding the complaints process included Professional Standards investigators (82%), those in administrative assignments (79%), Executives and Staff Sergeants (each at 76%), and Constables (72%). Results on this question did not vary much by years of service. Please see Table 22.

Table 21: Training Sufficient to Understand Role by Demographic Grouping

Training Sufficient to Understand Role	% Yes	% Somewhat	% No	% Don't Know
Constables	14%	43%	41%	2%
Corporals / Detectives	41%	31%	24%	3%
Executive	48%	48%	5%	-
Superintendent / Inspector	52%	41%	7%	-
Sergeant	32%	43%	25%	-
Staff Sergeant	48%	31%	21%	-
Corporate Functions	31%	51%	18%	-
Administration / Document Services / Prime	29%	43%	29%	-
Professional Standards / Internal Investigations	53%	35%	12%	-
Investigations	24%	36%	38%	1%
Targeted Enforcement Teams	19%	41%	39%	1%
General Duty / Patrol	17%	46%	36%	2%
Community Policing / Youth Liaison	25%	38%	37%	-
New Recruit / Block Training	31%	31%	38%	-
Other Assignments	17%	42%	38%	4%
Less than 5 years	14%	47%	37%	3%
6 to 10 years	12%	45%	42%	1%
11 to 15 years	16%	40%	42%	1%
16 to 20 years	25%	42%	32%	1%
21 to 25 years	32%	39%	29%	1%
Greater than 25 years	37%	37%	26%	-
Total	**21%**	**43%**	**35%**	**1%**

Table 22: Additional Training by Demographic Grouping

Additional Training	% Yes	% No	% Don't Know
Constables	72%	21%	7%
Corporals / Detectives	69%	28%	3%
Executive	76%	24%	-
Superintendent / Inspector	63%	33%	4%
Sergeant	74%	25%	1%
Staff Sergeant	76%	24%	-
Corporate Functions	77%	22%	1%
Administration / Document Services / Prime	79%	21%	-
Professional Standards / Internal Investigations	82%	18%	-
Investigations	66%	28%	6%
Targeted Enforcement Teams	68%	28%	4%
General Duty / Patrol	74%	19%	7%
Community Policing / Youth Liaison	71%	21%	8%
New Recruit / Block Training	63%	31%	6%
Other Assignments	74%	21%	6%
Less than 5 years	71%	19%	10%
6 to 10 years	73%	21%	6%
11 to 15 years	73%	21%	6%
16 to 20 years	77%	21%	2%
21 to 25 years	66%	30%	4%
Greater than 25 years	70%	29%	1%
Total	**72%**	**23%**	**6%**

2.3 EXPERIENCE WITH THE POLICE COMPLAINT PROCESS

Questions regarding experience with the process for handling complaints against the police started out with general questions regarding characteristics of internal and external investigations, and followed with opinions on disciplinary measures, direct involvement in the process and questions about the characteristics of specific complaints.

Findings throughout this section provide support for some commonly accepted theories about experience with the complaints process. For example, participants reported greater satisfaction with characteristics of internal investigations than external ones. Those with fewer years of experience and New Recruits had little direct experience in the handling of complaints; while those in front line policing, executive positions and Professional Standards assignments were more likely to have contact with the public regarding complaints against the police. Also, Constables (particularly those in general duty and Targeted Enforcement Teams) were most likely to be involved in complaints as either witnesses or respondents and least likely to believe that disciplinary measures are appropriate and applied consistently.

2.3.1 TIMELY, UNBIASED, AND WITH DUE DILIGENCE: INTERNAL VERSUS EXTERNAL

Participants were asked to rate their beliefs about the timeliness, fairness, and comprehensiveness of complaints investigations when handled by either internal and by external investigators. Overall, participants believed investigations into complaints conducted by internal investigators were more timely, unbiased, and thorough than those conducted by external investigators. Roughly three-quarters (69% to 79%) of all participants rated internal investigations as having those characteristics, while approximately one-third (30% to 38%) described external investigations in the same manner. It is important to note that at least half of all participants (50% to 52%) indicated that they did not know whether external investigations are conducted with due diligence or in a timely and unbiased manner. See Table 23.

Table 23: Characteristics of Internal and External Investigations

Do you believe investigations into complaints involving your department are conducted...	By internal investigators from within your department			By external investigators from another department		
	% Yes	% No	% Don't Know	% Yes	% No	% Don't Know
...in a timely manner?	69%	16%	15%	30%	19%	51%
...without bias?	74%	11%	15%	34%	16%	50%
...with due diligence?	79%	7%	14%	38%	10%	52%

These general findings are supported by responses provided in open-ended comments regarding timeliness, consistency, and fairness of internal and external investigations. Almost half (47%) of all comments provided regarding potential strengths of the existing complaints process pointed to internal investigations and investigators as fair, unbiased, transparent, timely, accountable, effective, and/or consistent, however 20% of those who made a comment on the question regarding weaknesses stated that the process in general is not timely, fair, and consistent. When discussing external investigations, some participants noted that outside investigations are sometimes necessary and can increase public confidence in the process. Others commented that: external investigators cannot understand the specific culture and environment within the department they are investigating; the RCMP should not be called in for externals because they do not operate under nor understand the *Police Act*; or, that external investigations in general take too long to complete.

Timely

When looking specifically at the question of timeliness, overall, 69% of participants noted that investigations into complaints involving their own department are conducted in a timely manner by internal investigators from within the department, while 30% reported that external investigations are timely. Executives and Superintendents/Inspectors were most likely to respond positively to questions on both internal (86% and 81%, respectively) and external investigators (67% and 50%, respectively), while Staff Sergeants were most likely to state that internal and external investigations are not timely (28% and 31%, respectively).

By assignment, those in Professional Standards, Administration, and Corporate Functions were most likely to indicate that they believe internal investigations are conducted in a timely manner (88%, 86% and 76%). These same three assignments also had the highest percent of participants who believed that external investigations are also timely (41%, 43% and 51%, respectively). It is interesting to note, however, that even though 41% of Professional Standards staff pointed to external investigations as conducted in a timely manner, 47% noted that external investigations were not timely.

There were no major differences between the years of service groupings when looking at ratings of timeliness for internal investigations. When considering external investigations, those with more than 25 years of service were most likely to state that they believed external investigations are conducted in a timely manner (44%), while those with 21 to 25 years of service were most likely to say that external investigations are not timely

(30%). Almost seven in ten (68%) of those with less than five years of service indicated that they did not know about the timeliness of external investigations.

Please see Table 24 for information on ratings of timeliness of internal and external investigations.

Table 24: Timeliness of Internal and External Investigations by Demographic Grouping

Complaints Investigations Are Timely	By internal investigators from within your department			By external investigators from another department		
	% Yes	% No	% Don't Know	% Yes	% No	% Don't Know
Constables	66%	16%	19%	25%	17%	58%
Corporals / Detectives	79%	10%	10%	28%	7%	66%
Executive	86%	14%	-	67%	29%	5%
Superintendent / Inspector	81%	15%	4%	50%	28%	22%
Sergeant	77%	16%	7%	39%	25%	36%
Staff Sergeant	69%	28%	3%	45%	31%	24%
Corporate Functions	76%	13%	12%	51%	17%	32%
Administration / Document Services / Prime	86%	4%	11%	43%	14%	43%
Professional Standards / Internal Investigations	88%	12%	-	41%	47%	12%
Investigations	69%	16%	15%	31%	19%	50%
Targeted Enforcement Teams	68%	21%	11%	23%	26%	51%
General Duty / Patrol	68%	15%	17%	27%	16%	56%
Community Policing / Youth Liaison	62%	19%	19%	37%	15%	48%
New Recruit / Block Training	63%	13%	25%	25%	19%	56%
Other Assignments	72%	17%	11%	21%	34%	45%
Less than 5 years	66%	10%	23%	22%	10%	68%
6 to 10 years	70%	17%	13%	24%	23%	52%
11 to 15 years	67%	16%	17%	29%	22%	49%
16 to 20 years	71%	16%	13%	37%	17%	46%
21 to 25 years	70%	23%	8%	33%	30%	38%
Greater than 25 years	72%	17%	11%	44%	21%	36%
TOTAL	**69%**	**16%**	**15%**	**30%**	**19%**	**51%**

Unbiased

With regard to the question of whether members believe investigations into complaints involving their department are conducted without bias by internal investigators and external investigators, 74% of overall participants agreed that internal investigations are unbiased, compared to 34% who believed external investigations are the same.

Executives were most likely to indicate that they believe both internal and external investigations are not biased (95% for each), followed by Staff Sergeants who were equally as likely to say that internal investigations are unbiased (93%) but less likely to state the same in regard to external investigations (69%).

Professional Standards investigators were more likely than other assignment groups to state that both internal and external investigations are conducted without bias (94% and 65%, respectively). Still, one-quarter (24%) of Professional Standards investigators did not believe that external investigations are conducted in an unbiased manner. New Recruits comprised the group least likely to state that investigations by internal investigators are unbiased (56%); however, this group also had high numbers who indicated that they did not know (31%).

All years of service groupings ranged from 70% to 78% who noted that internal investigations are conducted without bias; however, those with less than five years of service were more likely to indicate that they did not know (25%). When considering investigations conducted by external investigators, the general trend showed that participants with more years of service were more likely to report that external investigations are conducted without bias.

Please see Table 25 for information regarding ratings of fairness of investigations conducted by internal and external investigators.

Table 25: Fairness of Internal and External Investigations by Demographic Grouping

Complaints Investigations Are Conducted Without Bias	**By internal investigators from within your department**			**By external investigators from another department**		
	% Yes	**% No**	**% Don't Know**	**% Yes**	**% No**	**% Don't Know**
Constables	69%	12%	19%	29%	15%	57%
Corporals / Detectives	83%	10%	7%	28%	3%	69%
Executive	95%	5%	-	95%	-	5%
Superintendent / Inspector	91%	4%	6%	57%	19%	24%
Sergeant	82%	12%	6%	41%	23%	36%
Staff Sergeant	93%	3%	3%	69%	10%	21%
Corporate Functions	83%	6%	10%	56%	12%	32%
Administration / Document Services / Prime	75%	14%	11%	36%	29%	36%
Professional Standards / Internal Investigations	94%	6%	-	65%	24%	12%
Investigations	72%	17%	11%	38%	15%	48%
Targeted Enforcement Teams	74%	14%	12%	32%	17%	51%
General Duty / Patrol	73%	9%	18%	29%	14%	56%
Community Policing / Youth Liaison	77%	8%	15%	38%	13%	48%
New Recruit / Block Training	56%	13%	31%	38%	19%	44%
Other Assignments	70%	17%	13%	32%	30%	38%
Less than 5 years	72%	4%	25%	24%	10%	67%
6 to 10 years	73%	14%	13%	27%	19%	55%
11 to 15 years	70%	15%	15%	33%	16%	51%
16 to 20 years	75%	16%	9%	42%	18%	40%
21 to 25 years	78%	14%	8%	47%	18%	35%
Greater than 25 years	78%	10%	12%	46%	18%	36%
TOTAL	**74%**	**11%**	**15%**	**34%**	**16%**	**50%**

Due Diligence

Regarding questions of the comprehensiveness of investigations by internal and external investigators, 79% of participants overall indicated that internal investigations are conducted with due diligence, while 38% said the same about external investigations. This question yielded higher numbers who indicated that due diligence is used in both internal and external investigations compared to the questions on fairness and timeliness of investigations, suggesting that participants are more satisfied with the level of effort going into investigations than they are with the amount of time and the potential for bias. See Table 23 above for comparison between these questions.

Executives and Superintendents/Inspectors were most likely to indicate that they believe both internal investigations (100% and 98%, respectively) and external investigations (90% and 65%, respectively) are conducted with due diligence. Corporals/Detectives were also likely to state that internal investigations are conducted with due diligence (93%), but did not indicate the same about external investigations (28% said yes; 72% reported that they do not know).

Those in Professional Standards and Corporate Functions reported that due diligence is utilized in internal investigations (100% and 90%, respectively); and were most likely to state the same about external investigations (71% and 63%, respectively). New Recruits comprised the group with the fewest members who indicated that internal investigations are conducted with due diligence (63%), while 31% of New Recruits did not know.

More than three-quarters of all years of service groups reported that internal investigations are conducted with due diligence. Reports of the same for external investigations increased with years of service, from 27% to 53%. See Table 26 below.

Table 26: Due Diligence of Internal and External Investigations by Demographic Grouping

Complaints Investigations Are Conducted With Due Diligence	By internal investigators from within your department			By external investigators from another department		
	% Yes	% No	% Don't Know	% Yes	% No	% Don't Know
Constables	75%	7%	18%	32%	9%	59%
Corporals / Detectives	93%	3%	3%	28%	-	72%
Executive	100%	-	-	90%	-	10%
Superintendent / Inspector	98%	-	2%	65%	13%	22%
Sergeant	88%	8%	4%	51%	12%	37%
Staff Sergeant	83%	14%	3%	59%	17%	24%
Corporate Functions	90%	3%	8%	63%	6%	31%
Administration / Document Services / Prime	86%	7%	7%	43%	11%	46%
Professional Standards / Internal Investigations	100%	-	-	71%	12%	18%
Investigations	80%	10%	10%	39%	10%	52%
Targeted Enforcement Teams	79%	10%	11%	33%	14%	53%
General Duty / Patrol	78%	6%	17%	35%	9%	56%
Community Policing / Youth Liaison	79%	6%	15%	42%	8%	50%
New Recruit / Block Training	63%	6%	31%	38%	6%	56%
Other Assignments	74%	11%	15%	34%	19%	47%
Less than 5 years	75%	2%	23%	27%	4%	69%
6 to 10 years	80%	7%	12%	30%	14%	56%
11 to 15 years	77%	11%	13%	36%	10%	54%
16 to 20 years	82%	9%	9%	49%	11%	40%
21 to 25 years	81%	11%	8%	48%	13%	39%
Greater than 25 years	86%	6%	8%	53%	12%	34%
TOTAL	**79%**	**7%**	**14%**	**38%**	**10%**	**52%**

2.3.2 DISCIPLINARY MEASURES

Less than half (46%) of all participants believe that disciplinary measures with regard to complaints against the police are applied consistently within their department. Constables and Corporals/Detectives were the groups least likely to report that discipline is consistent (40% and 48%, respectively); though ratings improved with rank – 95% of Executives believe that discipline is applied consistently. It is important to note that 36% of Constables indicated that they did not know whether discipline was consistent.

Those in Professional Standards and Corporate Functions were more likely to report that disciplinary measures are applied consistently compared to other assignment groupings (88% and 76%, respectively). Professional Standards investigators were the most decided on this question – all of them answered either "yes" or "no" – while New Recruits were equally likely to state that they do not know as to state that they believe discipline is consistent (44% each).

No major trends were apparent when comparing results for years of service groupings, though almost half (48%) of all participants with less than five years of service indicated that they did not know if disciplinary measures with regard to complaints are applied consistently. Please see Table 27.

Table 27: Consistency of Disciplinary Measures by Demographic Grouping

Consistency of Disciplinary Measures	% Yes	% No	% Don't Know
Constables	40%	24%	36%
Corporals / Detectives	48%	34%	17%
Executive	95%	5%	-
Superintendent / Inspector	76%	20%	4%
Sergeant	60%	27%	13%
Staff Sergeant	62%	21%	17%
Corporate Functions	76%	15%	9%
Administration / Document Services / Prime	50%	21%	29%
Professional Standards / Internal Investigations	88%	12%	-
Investigations	47%	29%	24%
Targeted Enforcement Teams	48%	31%	21%
General Duty / Patrol	42%	21%	37%
Community Policing / Youth Liaison	37%	29%	35%
New Recruit / Block Training	44%	13%	44%
Other Assignments	49%	30%	21%
Less than 5 years	38%	14%	48%
6 to 10 years	46%	30%	24%
11 to 15 years	43%	30%	27%
16 to 20 years	50%	28%	22%
21 to 25 years	55%	26%	19%
Greater than 25 years	55%	23%	21%
Total	**46%**	**24%**	**29%**

In addition to whether or not sworn members believe discipline is applied consistently, participants were also asked whether they feel that disciplinary measures relating to complaints against the police are appropriate, too harsh, or too lenient. The majority of participants (58%) indicated that disciplinary measures are appropriate, and more than one-quarter (28%) reported that they did not know. The likelihood of stating that discipline is appropriate increased with rank; 51% of Constables noted that discipline is appropriate while 90% of Executives indicated the same. Staff Sergeants were most likely to note that discipline in relation to complaints is too lenient (14%); in contrast, only 2% of all Constables reported the same, and 12% noted their belief that discipline is too harsh.

As with the question regarding whether disciplinary measures are consistently applied, those in Professional Standards and Corporate Functions were more likely to report discipline is appropriate compared to other assignment groupings (88% and 77%, respectively). Both groups were also the most decided on this question - only 6% of Professional Standards investigators indicated that they did not know, and 12% of those in Corporate Functions, while 21-35% of all other assignments stated that they did not know. New Recruits were equally split, with 44% who indicated that discipline is appropriate and stated that they did not know, as well as 6% who noted each that discipline was too harsh or that it was too lenient.

There were no major differences when reviewing opinions regarding the appropriateness of disciplinary measures by years of service, though those with less than five years of service had the lowest percent of participants who noted that discipline is appropriate (44%) and the most who said that they did not know (44%). See Table 28 for detail.

Open-ended comments regarding the appropriateness of discipline pointed to the benefits of discipline being corrective rather than punitive, keeping it within the department by having the Chief as the discipline authority, the depth of disciplinary options and measures, and the flexibility discipline authorities can use in meting out disciplinary measures. Others pointed to disciplinary measures as being subjective, without standardization, inconsistent, punitive, unequal based on ranks, and "not significant enough to act as a deterrent for some officers". One person noted that discipline is sometimes initiated before an issue is resolved or the investigation completed. Another participant suggested that disciplinary measures given out should be made public within the police service.

Table 28: Appropriateness of Disciplinary Measures by Demographic Grouping

Appropriateness of Disciplinary Measures	% Too harsh	% Appropriate	% Too lenient	% Don't Know
Constables	12%	51%	2%	35%
Corporals / Detectives	7%	59%	3%	31%
Executive	-	90%	10%	-
Superintendent / Inspector	-	89%	7%	4%
Sergeant	7%	77%	4%	12%
Staff Sergeant	3%	69%	14%	14%
Corporate Functions	4%	77%	8%	12%
Administration / Document Services / Prime	4%	61%	7%	29%
Professional Standards / Internal Investigations	-	88%	6%	6%
Investigations	9%	64%	4%	23%
Targeted Enforcement Teams	13%	63%	4%	21%
General Duty / Patrol	11%	52%	2%	36%
Community Policing / Youth Liaison	15%	48%	2%	35%
New Recruit / Block Training	6%	44%	6%	44%
Other Assignments	17%	66%	4%	13%
Less than 5 years	12%	44%	-	44%
6 to 10 years	13%	59%	1%	27%
11 to 15 years	13%	54%	7%	27%
16 to 20 years	11%	66%	4%	19%
21 to 25 years	7%	72%	4%	17%
Greater than 25 years	3%	68%	6%	22%
Total	**10%**	**58%**	**3%**	**28%**

2.3.3 DIRECT INVOLVEMENT

In addition to their views of the complaints process overall, participants were asked whether or not they had direct experience with the process, both from the perspective of directing a member of the public on how or where to lodge a complaint as well as whether they have had a complaint laid against them or acted as a witness in a complaint investigation.

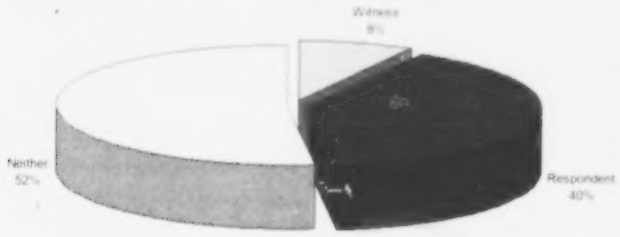
Overall, 54% of all participants have been approached by a member of the public with regard to making a complaint against the department or a police officer employed within the department. Executives, Staff Sergeants and Sergeants were most likely to have been approached by a member of the public (81%, 79%, and 66%, respectively) while Corporals/Detectives were the least likely (34%). By assignment, those in Professional Standards and community policing were most likely (88% and 69%, respectively) while those in Investigations and New Recruit Block Training were the least likely (35% and 13%, respectively). There were no major differences between years of service grouping with regard to whether or not they have been approached by a member of the public in regard to making a complaint. Please see Table 29.

Table 29: Approached by a Member of the Public by Demographic Grouping

Approached by Member of Public	% Yes	% No
Constables	50%	50%
Corporals / Detectives	34%	66%
Executive	81%	19%
Superintendent / Inspector	54%	46%
Sergeant	66%	34%
Staff Sergeant	79%	21%
Corporate Functions	50%	50%
Administration / Document Services / Prime	54%	46%
Professional Standards / Internal Investigations	88%	12%
Investigations	35%	65%
Targeted Enforcement Teams	54%	46%
General Duty / Patrol	61%	39%
Community Policing / Youth Liaison	69%	31%
New Recruit / Block Training	13%	88%
Other Assignments	57%	43%
Less than 5 years	50%	50%
6 to 10 years	60%	40%
11 to 15 years	53%	47%
16 to 20 years	60%	40%
21 to 25 years	51%	49%
Greater than 25 years	49%	51%
Total	**54%**	**46%**

When considering whether or not participants had been named in a complaint or acted as a witness, or both, 48% of all participants reported having been involved in the process over the past two years (8% as a witness and 40% as a respondent or a respondent *and* witness); while 52% indicated that they had never been involved. See Figure 3.

Figure 3: Involvement in the Police Complaint Process



Almost half (45%) of all Constables indicated that they had acted as a respondent or performed both roles (respondent and witness) within the past two years. In comparison, approximately one-quarter of all other ranks reported the same. Similarly individuals on General Duty / Patrol assignments or from Targeted Enforcement Teams were most likely to report the same (51% and 48% who have been a respondent or both a respondent and witness). Please see Table 30.

Compared to other groups, those in Professional Standards assignments and the Executive were more likely to state that they have been named as respondents (29% and 24%, respectively). Officers in Administration and New Recruit Block Training were least likely to have been involved in the complaints process, with 82% and 81% who stated that they had been neither a respondent nor a witness over the past two years.

By years of service, the general trend showed that the more experience a participant has, the less likely he or she is to report being involved in the complaints process. The exception to this trend was with regard to those with greater than 25 years of service, who had a higher percent of members who indicated being involved compared to the 21 to 25 years of service group. Please see Table 30.

Table 30: Involved in Complaints Process as Respondent or Witness by Demographic Grouping

Involved in Complaints Process as Respondent or Witness	% Respondent	% Witness	% Both	% Neither	Respondent + Both
Constables	32%	8%	13%	47%	45%
Corporals / Detectives	17%	3%	7%	72%	24%
Executive	24%	-	-	76%	24%
Superintendent / Inspector	19%	7%	6%	69%	24%
Sergeant	20%	8%	8%	63%	28%
Staff Sergeant	14%	7%	7%	72%	21%
Corporate Functions	17%	4%	1%	78%	18%
Administration / Document Services / Prime	11%	-	7%	82%	18%
Professional Standards / Internal Investigations	29%	12%	-	59%	29%
Investigations	19%	6%	6%	69%	25%
Targeted Enforcement Teams	30%	11%	17%	42%	48%
General Duty / Patrol	36%	10%	15%	39%	51%
Community Policing / Youth Liaison	15%	4%	10%	71%	25%
New Recruit / Block Training	-	13%	6%	81%	6%
Other Assignments	15%	8%	13%	64%	28%
Less than 5 years	38%	11%	15%	36%	53%
6 to 10 years	32%	11%	17%	41%	48%
11 to 15 years	28%	7%	11%	54%	39%
16 to 20 years	23%	7%	10%	60%	33%
21 to 25 years	14%	6%	7%	73%	21%
Greater than 25 years	23%	3%	3%	70%	27%
Total	**28%**	**8%**	**12%**	**52%**	**40%**

2.3.4 TIMELY, UNBIASED, AND WITH DUE DILIGENCE: SPECIFIC COMPLAINT

Participants who indicated that they had been involved in the process, either as a witness or a respondent, or both were asked about the timeliness, fairness, and comprehensiveness of the most recent complaint in which they were involved. These questions were similar to those asked in regard to comparing internal investigations to external investigations, with the exception that this question directed participants to the specific situation they had been involved in and not their overall opinion.

Overall, three-quarters (75%) of all participants noted that the most recent investigation they were involved with was conducted in a timely manner, 83% stated that it was conducted without bias, and 86% reported that it was done with due diligence. See Table 31.

Table 31: Characteristics of the Most Recent Investigation

Do you believe the investigation into that particular complaint was conducted...	% Yes	% No	% Don't Know
...in a timely manner?	75%	21%	4%
...without bias?	83%	9%	8%
...with due diligence?	86%	6%	7%

Timely

When looking specifically at the question of timeliness of the complaint, overall, 75% of participants noted that it was conducted in a timely manner. All executives (100%) reported that the investigation into the complaint was conducted in a timely manner. Executives were followed by Corporals/Detectives, where 88% noted that the investigation was conducted in a timely manner.

When comparing reports of timeliness by assignment, those in Corporate Functions and those in Professional Standards were most likely to indicate that the complaint they were involved with – either as a respondent or as a witness – was conducted in a timely manner (88% and 86%, respectively). All New Recruits who had been involved in a complaint in the past two years (n=3) reported that the investigation was not conducted in a timely manner.

Those with 21 to 25 years of service and those with greater than 25 years of service were most likely to indicate that the investigation had not been conducted in a timely manner (38% and 32%, respectively).

Please see Table 32 for information on ratings of timeliness of the most recent investigation.

Table 32: Timeliness of Most Recent Investigation by Demographic Grouping

Investigation Was Timely	% Yes	% No	% Don't Know
Constables	76%	20%	5%
Corporals / Detectives	88%	13%	-
Executive	100%	-	-
Superintendent / Inspector	71%	29%	-
Sergeant	70%	29%	1%
Staff Sergeant	75%	25%	-
Corporate Functions	88%	12%	-
Administration / Document Services / Prime	80%	20%	-
Professional Standards / Internal Investigations	86%	14%	-
Investigations	80%	16%	4%
Targeted Enforcement Teams	61%	34%	5%
General Duty / Patrol	78%	18%	4%
Community Policing / Youth Liaison	73%	20%	7%
New Recruit / Block Training	-	100%	-
Other Assignments	58%	42%	-
Less than 5 years	78%	17%	6%
6 to 10 years	76%	21%	3%
11 to 15 years	76%	21%	4%
16 to 20 years	79%	17%	3%
21 to 25 years	62%	38%	-
Greater than 25 years	66%	32%	2%
TOTAL	**75%**	**21%**	**4%**

Unbiased

With regard to the question of whether members believe the most recent investigation they have been involved in as either a witness or a respondent was biased, 83% overall indicated that the investigation was conducted without bias. A full 100% of all Executive, Staff Sergeants, and Corporals/Detectives reported that the investigation was not biased, followed by 94% of Superintendents/ Inspectors who noted the same.

By assignment, all of those in Professional Standards and Corporate Functions (100%) said there was no bias. One-third of New Recruits reported each that the latest investigation was conducted without bias, that it was *not* conducted without bias, or did not know (33% each).

Please see Table 33 for information regarding ratings of fairness of the most recent investigation.

Table 33: Fairness of Most Recent Investigation by Demographic Grouping

Investigation was Conducted Without Bias	**% Yes**	**% No**	**% Don't Know**
Constables	82%	9%	10%
Corporals / Detectives	100%	-	-
Executive	100%	-	-
Superintendent / Inspector	94%	6%	-
Sergeant	81%	17%	2%
Staff Sergeant	100%	-	-
Corporate Functions	100%	-	-
Administration / Document Services / Prime	80%	-	20%
Professional Standards / Internal Investigations	100%	-	-
Investigations	88%	6%	6%
Targeted Enforcement Teams	75%	15%	10%
General Duty / Patrol	83%	9%	8%
Community Policing / Youth Liaison	87%	-	13%
New Recruit / Block Training	33%	33%	33%
Other Assignments	63%	26%	11%
Less than 5 years	86%	5%	10%
6 to 10 years	78%	11%	11%
11 to 15 years	78%	12%	10%
16 to 20 years	85%	14%	1%
21 to 25 years	84%	13%	2%
Greater than 25 years	82%	11%	7%
TOTAL	**83%**	**9%**	**8%**

Due Diligence

Regarding the comprehensiveness of the most recent investigation, overall, 86% of those who had been involved as either a respondent or witness in the past two years indicated that the investigation was conducted with due diligence. As with the question on bias, numerous groups had 100% of their participants who reported that the most recent investigation was conducted with due diligence, including:

- Executives;
- Superintendent / Inspector;
- Staff Sergeant;
- Sergeant;
- Corporals / Detectives;
- Corporate Functions;
- Administration / Document Services / Prime; and
- Professional Standards / Internal Investigations.

The groups that were least likely to say that due diligence was used included New Recruits and other assignments that did not fit into the regular categories (33% and 63% reported that the investigation was conducted with due diligence). One reason for New Recruits reporting such is that 67% (or 2 out of 3) reported that they did not know whether due diligence was used. See Table 34.

Table 34: Due Diligence of Most Recent Investigation by Demographic Grouping

Investigation Was Conducted With Due Diligence	% Yes	% No	% Don't Know
Constables	86%	6%	8%
Corporals / Detectives	100%	-	-
Executive	100%	-	-
Superintendent / Inspector	100%	-	-
Sergeant	86%	11%	4%
Staff Sergeant	100%	-	-
Corporate Functions	100%	-	-
Administration / Document Services / Prime	80%	-	20%
Professional Standards / Internal Investigations	100%	-	-
Investigations	89%	6%	5%
Targeted Enforcement Teams	82%	10%	8%
General Duty / Patrol	88%	5%	7%
Community Policing / Youth Liaison	93%	-	7%
New Recruit / Block Training	33%	-	67%
Other Assignments	63%	26%	11%
Less than 5 years	91%	2%	7%
6 to 10 years	82%	9%	10%
11 to 15 years	85%	4%	12%
16 to 20 years	85%	11%	3%
21 to 25 years	87%	9%	4%
Greater than 25 years	86%	9%	5%
TOTAL	**86%**	**6%**	**7%**

2.4 AWARENESS OF THE OPCC

Findings throughout this section suggest that although participants are aware of the role of the OPCC not many recall having been in contact with the Office throughout their career. This becomes increasingly the case when discussing groups with more members that indicated they had been involved in the complaints process (e.g., Constables in general duty or Targeted Enforcement Teams). Overall, less than a quarter of participants reported confidence with the OPCC, while a greater number were neutral and the majority (four in ten) stated that they were not confident. Reasons for such confidence ratings of the OPCC may be linked with remarks provided in open-ended questions about the process. Some participants noted that the OPCC may provide a vehicle for increasing public confidence by reviewing complaints and ensuring standards are met, however, others noted that OPCC decisions are subject to bias against the police and to public and political influence.

2.4.1 AWARENESS OF OPCC

Participants were asked if they were aware of the role of the OPCC for British Columbia. Overall, 89% stated that they were aware. Those who indicated they were not received further information regarding the OPCC, including the following:

The Office of the Police Complaint Commissioner (OPCC) is responsible for overseeing the handling of complaints against municipal police to ensure they are handled fairly and impartially. The OPCC ensures that all complaints are thoroughly and professionally investigated by the police. The Commissioner may request additional investigation either by the same investigators or by an external agency, and may arrange for a Public Hearing.

- Persons wishing to make a complaint may do so either to the OPCC or to the Police Department involved in the complaint. Staff at either location will:
    - Ensure that the complainant understands the process,
    - Ensure that the complainant understands their rights under the Police Act,
    - Assist the complainant by providing necessary information, and
    - Provide information about informal resolution or mediation.

Groups with the most participants who were unfamiliar with the role of the OPCC included Constables and members with less than 10 years of experience. See Table 35 for detail.

Table 35: Awareness of the Role of the OPCC by Demographic Grouping

Aware of the Role of the OPCC	% Yes	% No
Constables	87%	13%
Corporals / Detectives	86%	14%
Executive	100%	-
Superintendent / Inspector	100%	-
Sergeant	95%	5%
Staff Sergeant	100%	-
Corporate Functions	95%	5%
Administration / Document Services / Prime	100%	-
Professional Standards / Internal Investigations	100%	-
Investigations	89%	11%
Targeted Enforcement Teams	92%	8%
General Duty / Patrol	88%	12%
Community Policing / Youth Liaison	90%	10%
New Recruit / Block Training	88%	13%
Other Assignments	89%	11%
Less than 5 years	85%	15%
6 to 10 years	87%	13%
11 to 15 years	89%	11%
16 to 20 years	93%	7%
21 to 25 years	93%	7%
Greater than 25 years	96%	4%
TOTAL	**89%**	**11%**

2.4.2 CONTACT WITH OPCC

As stated in the section on experience with the complaints process, 40% of all participants reported being involved in the process as respondent or as both a witness and respondent over the past two years. However, less than a quarter (23%) reported having ever been in contact with the OPCC. Those most likely to have had contact with the OPCC include higher rank levels such as Executives and Superintendents/Inspectors (81% and 63%, respectively, who reported having been in contact) and those in Professional Standards (94%). Contact with OPCC also tends to increase with years of service.

It is interesting to note, though, that groups with a higher percent of participants who reported having been involved in a complaint over the past two years – whether as a respondent or as a witness and respondent – were less likely to have had contact with the OPCC. This includes Constables, those in general duty and Targeted Enforcement Teams, and those with less than five years of service. Table 36 shows that 45% of Constables were involved in a complaint in the past two years, while 15% reported having ever had contact with the OPCC. For those in general duty and Targeted Enforcement Teams, 51% and 48% have been involved, and 18% and 21% have had contact. Similarly, 53% of participants with less than five years of service reported having been involved in a complaint within the past five years, while 10% had contact with the OPCC. See Table 36 for comparisons.

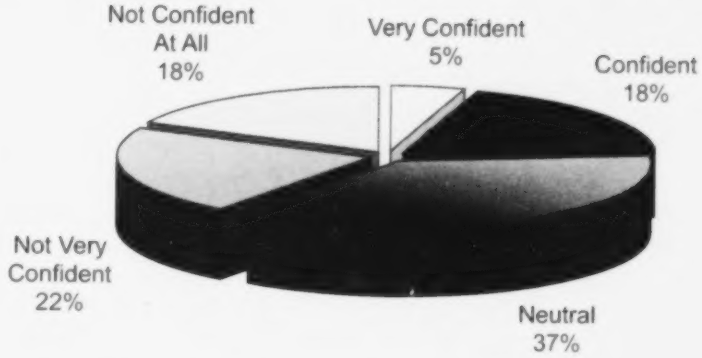
Table 36: Contact with the OPCC by Demographic Grouping

Contact with OPCC	% Yes	% No	% Don't Know	Respondent + Both
Constables	15%	83%	2%	45%
Corporals / Detectives	31%	66%	3%	24%
Executive	81%	19%	-	24%
Superintendent / Inspector	63%	37%	-	24%
Sergeant	36%	63%	1%	28%
Staff Sergeant	41%	59%	-	21%
Corporate Functions	44%	55%	1%	18%
Administration / Document Services / Prime	39%	57%	4%	18%
Professional Standards / Internal Investigations	94%	6%	-	29%
Investigations	24%	73%	3%	25%
Targeted Enforcement Teams	21%	78%	1%	48%
General Duty / Patrol	18%	81%	1%	51%
Community Policing / Youth Liaison	13%	87%	-	25%
New Recruit / Block Training	19%	81%	-	6%
Other Assignments	36%	64%	-	28%
Less than 5 years	10%	90%	-	53%
6 to 10 years	17%	80%	3%	48%
11 to 15 years	20%	78%	2%	39%
16 to 20 years	33%	65%	2%	33%
21 to 25 years	36%	63%	1%	21%
Greater than 25 years	36%	64%	-	27%
TOTAL	**23%**	**75%**	**1%**	**40%**

2.4.3 CONFIDENCE WITH OPCC

Regardless of whether participants had been in contact with the OPCC or not, all participants were asked to rate their level of confidence with the performance of the OPCC. Overall, almost one-quarter (23%) of participants noted that they were confident or very confident with the Office; more than one-third (37%) provided a neutral rating, and 40% overall stated that they were not very confident or not confident at all with the OPCC. Almost one in five participants (n=225) reported that they did not know or had no opinion regarding their confidence with the OPCC. Please see Figure 4.

Figure 4: Confidence with the Performance of the OPCC



Differences between ranks indicate that department Executive and Staff Sergeants are the groups most confident with the OPCC (67% and 64%, respectively), while Sergeants, Constables, and Corporals/Detectives were least confident (43%, 41% and 41%, respectively, who noted that they were not confident or not confident at all). Please see Table 37.

Table 37: Confidence with the OPCC by Demographic Grouping

Confidence with OPCC	% Confident & Very Confident	% Neutral	% Not Very Confident & Not At All	% Don't Know/ No Opinion
Constables	18%	42%	41%	204
Corporals / Detectives	19%	41%	41%	2
Executive	67%	10%	24%	-
Superintendent / Inspector	39%	24%	37%	-
Sergeant	29%	28%	43%	18
Staff Sergeant	64%	21%	14%	1
Corporate Functions	34%	26%	39%	2
Administration / Document Services / Prime	50%	27%	23%	2
Professional Standards / Internal Investigations	82%	6%	12%	-
Investigations	18%	40%	42%	33
Targeted Enforcement Teams	19%	34%	47%	20
General Duty / Patrol	22%	40%	38%	143
Community Policing / Youth Liaison	12%	46%	41%	11
New Recruit / Block Training	22%	44%	33%	7
Other Assignments	24%	28%	48%	7
Less than 5 years	16%	45%	39%	119
6 to 10 years	15%	44%	41%	35
11 to 15 years	21%	44%	35%	26
16 to 20 years	29%	25%	46%	19
21 to 25 years	29%	31%	40%	12
Greater than 25 years	34%	31%	35%	14
TOTAL	**23%**	**37%**	**40%**	**225**

By assignment, Professional Standards investigators and Administration staff were most confident (82% and 50%, respectively), while those in Targeted Enforcement Teams and those in other assignments that did not fit into the regular categories were most likely to state that they were not very confident or not confident at all (47% and 48%, respectively).

Also shown in Table 37, confidence with the OPCC increases with years of service. The exception to this trend is that those with less than five years and those with six to ten years of service had similar reporting patterns.

2.5 ANALYSIS OF COMMENTS

With respect to police confidence with the overall process for handling public complaints against the police, the data have revealed that half of all participants are confident, while one-third provided neutral ratings, and one in five (21%) reported non-confidence. Executives, Staff Sergeants, and Sergeants were the most confident of all rank groups; Professional Standards investigators and Corporate Functions were the most confident of all assignment groups, and those with more than 25 years of service were the most confident of all years of service groupings. Throughout, Constables with less than 10 years of service working in Targeted Enforcement Teams and general duty/patrol were least likely to report positive opinions about the process.

All participants were asked to provide further information regarding what they see as the strengths and weaknesses of the current complaints process overall. Responses to these open-ended questions show that, on the whole, officers are generally satisfied with the quality of investigations and internal investigators and they believe that having police investigators who are aware of the complexities of policing was a benefit to the complaints process in general because only investigators with a policing background would understand an officer's decision-making processes and would be better able to discover a default if one has occurred. The negative aspects of police investigating police were mentioned relatively few times (8% of responses) and were discussed as a potential for bias (positive or negative) within the relationship of a respondent officer to the internal investigator or department executive, and that the negative public perception of the process is the biggest concern.

The elements most often mentioned by participants as strengths included the quality of investigations, the benefits of police investigating police, and the existing process and structure for handling public complaints against the police. Elements most often noted as weaknesses included frivolous and third party complaints, the OPCC in general, political influence on the process, and the lack of timeliness, fairness, and consistency.

2.5.1 STRENGTHS OF THE EXISTING PROCESS

Regarding the question on strengths of the current complaints process, 738 participants responded to this question, providing 1,032 distinct comments. These comments were grouped into descriptive themes, and the themes assembled under five overarching categories. These five categories include (1) timely, consistent, and fair, (2) police investigating police, (3) process and structure, (4) oversight, and (5) accessibility. The remaining comments did not appear in sufficient recurrence to constitute an additional theme of their own and were grouped in a category entitled 'miscellaneous'. An explanation of the types of comments found across the thematic categories follows. See Table 38 for a list of the recurring themes within participants' comments on the strengths of the existing Police Complaint Process.

Timely, Consistent, and Fair (47% of those who provided comment)

The majority of comments made regarding the strengths of the current process for handling complaints against the police pointed to the level of objectivity and fairness afforded to the investigations. Participants noted that internal investigators are competent and professional and conduct thorough reviews in an open, transparent, and timely manner. The process overall is considered to be accountable, efficient, effective, and conducted in a consistent and straight-forward manner by these participants.

Police Investigating Police (32% of those who provided comment)

Comments made regarding police investigating police point to the benefit of having individuals who have been professionally trained in conducting objective investigations and have knowledge and experience in police-related activities to carry out examinations of complaints against the police. Some participants also noted that civilian investigators would not have the insight to be able to fully understand why an officer might choose to act in a certain manner, would likely not be as experienced in investigations, or may be subject to the sway of political agendas, media, and public opinion.

Process and Structure (20% of those who provided comment)

Strengths found within the process and structure of the complaints system, as identified by 20% survey participants, included that: the process is beneficial for the simple fact that it exists; it is structured in reporting requirements and decision making parameters yet provides flexibility depending on investigative requirements (including ability for external investigations); respondents and complainants are afforded notification and updates regarding their complaint; and there is a process for dismissing frivolous complaints. Several officers also pointed to the benefits of informal resolutions when possible, and corrective discipline when necessary. A few also pointed to the *Police Act* as providing a functional outline, and two noted that the fact that process exists province-wide for municipal departments is a major strength.

Table 38: Strengths of the Current Complaints Process

Category Title and Definition	Recurring Theme	# of Times Mentioned	% of N (738)
Timely, Consistent, and Fair		**345**[4]	**47%**
The system is the above as well as open and accountable, efficient and effective, thorough and clear	Fair/Unbiased/Balanced/Objective	138	19%
	Quality/Thorough/Professional/Competent (Investigations and investigators)	138	19%
	Open/Transparent	71	10%
	Timely	44	6%
	Accountable	41	6%
	Effective	9	1%
	Clear	7	1%
	Efficient	5	1%
	Consistent	4	1%
Police Investigating Police		**235**	**32%**
The system works because of police investigation	Benefits of police investigating police	234	32%
	No sway by political agendas	6	1%
Process and Structure		**149**	**20%**
The system is structured yet flexible and is a boon simply for the fact that it exists	Process is flexible	27	4%
	Process exists	24	3%
	Discipline as corrective rather than punitive	21	3%
	Process is structured	21	3%
	Informal resolution	20	3%
	Frivolous complaints can be dismissed	19	3%
	External investigations	17	2%
	Notifications/disclosure of information	14	2%
	Police Act provides outline	10	1%
	Process is province-wide for municipal PDs	2	< 1%
Oversight		**144**	**20%**
Comments made about OPCC and civilian oversight	Positive comments about OPCC	127	17%
	Civilian oversight specifically	19	3%
Accessibility		**88**	**12%**
The process is accessible to public, takes complaints seriously, and is easy to navigate through	Accessible to public	49	7%
	All complaints taken seriously	26	4%
	System is easy to use	15	2%
	3rd Party complaints are accepted	4	1%
Miscellaneous		**71**	**10%**
Random or seldom mentioned comments or themes that did not group together in a coherent fashion	Miscellaneous comments	32	4%
	Integrity/Improvement/Culture	15	2%
	Rights of respondents are maintained	13	2%
	Chief provides positive influence	10	1%
	Mental health issues taken into account	3	< 1%
Grand Total	**1032 comments provided by 738 participants**		

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[4] This number reflects the possibility that participants may have mentioned more than one theme within their one comment (i.e., the total number of comments within a given category is less than the sum of all themes).

Oversight (20% of those who provided comment)

Several officers pointed to the oversight mechanism as a strength of the current process for handling complaints against the police. They noted that it provides an "independent vehicle" for complainants to have their complaints reviewed, and, as a result, strengthens public confidence in the process. The oversight provided by the OPCC is said to achieve the above result while at the same time allowing for trained police investigators to continue examining complaints against police. In addition, the OPCC is said to function as a unifying mechanism, ensuring that there is the same standard of investigation across all municipal departments.

Accessibility (12% of those who provided comment)

Several participants pointed to the complaints process as being highly accessible to both police and public with its varied mechanisms whereby a complainant can voice their concerns, including a confidential or non-confidential written or in-person complaint to either the department or the OPCC. They said that all complaints are treated seriously (even frivolous ones) and if investigation is warranted, then it will be carried out. They also indicated that the system is easy to use and to navigate through, and a few officers noted that they like that third party complaints can be lodged. One participant stated that the "public can make both third party complaints and [can] complain at a location away from the department in question and thus gain confidence in the system."

Miscellaneous (10% of those who provided comment)

Some of the comments provided by participants were seldom mentioned or unique enough that they could not be grouped into a coherent theme. Others could be grouped into a theme but the theme did not match or develop into an overarching category. An example of this latter type included the notion that mental health issues with respect to complainants need to be addressed in the complaints process.

2.5.2 WEAKNESSES OF THE EXISTING PROCESS

Regarding the question on weaknesses of the current complaints process, 786 participants responded to this question, providing 1,302 distinct points or comments. These comments were grouped into descriptive themes, and the themes assembled under nine overarching categories. These nine categories include:

1. Frivolous complaints;
2. OPCC in general;
3. Sway (political, public, etc.);
4. Not timely, consistent or fair;
5. Management issues;
6. Officer's rights;
7. The *Police Act*;
8. Police investigating police; and
9. RCMP.

The remaining comments did not appear in sufficient recurrence to constitute an additional theme of their own and were grouped in a category entitled 'miscellaneous'. An explanation of the types of comments found across the thematic categories follows. See Table 39 for a list of the recurring themes within participants' comments on the weaknesses of the existing Police Complaint Process.

Table 39: Weaknesses of the Current Complaints Process

Category Title and Definition	Recurring Theme	# of Times Mentioned	% of N (786)
Frivolous Complaints		**286**[5]	**36%**
Too easy to make a groundless complaint	Too Many Frivolous Complaints	252	32%
	3rd Party (should not be accepted)	52	7%
	Out of Date (should not be accepted)	4	1%
OPCC		**189**	**24%**
Any comment made about the Office, Commissioner, or staff	Negative Comments about OPCC	178	23%
	Awareness Required (Public & Police)	23	3%
Sway		**182**	**23%**
Process is too strongly influenced by the following:	Political Agendas	68	9%
	Negative Public Perception	61	8%
	Negative Media Attention	60	8%
	Special Interest Groups	33	4%
Not Timely, Consistent, or Fair		**157**	**20%**
Process is NOT the above	Not Timely	83	11%
	Not Fair (Bias)	51	6%
	Not Applied Consistently	37	5%
Management Issues		**138**	**18%**
Employee or Department management issues. Complaints:	Drain Resources	66	8%
	Create Stress/Affect Morale	41	5%
	Require More Training	38	5%
Officer's Rights		**117**	**15%**
Are violated	Rights are Violated Through Process	111	14%
	Statements (should be/not be required)	14	2%
Police Act		**65**	**8%**
Anything relating to the text, language of the text, comprehension of the text, or administrative burden derived from the current Act	Police Act in General	40	5%
	Cumbersome/complicated process	17	2%
	Language is complex or insulting	8	1%
	Purging of Employee Records	6	1%
	Administrative Burden	4	1%
Police Investigating Police		**59**	**8%**
Good and bad comments	Police Investigating Police in General	59	8%
RCMP		**21**	**3%**
Reflections on RCMP as externals or re. Police Act	Challenge of being an External	12	2%
	Act should apply to RCMP also	11	1%
Miscellaneous		**88**	**11%**
Random or seldom mentioned	Miscellaneous Comments	76	10%
	Mental Issues	13	2%
Grand Total	**1,302 comments provided by 786 participants**		

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[5] This number reflects the possibility that participants may have mentioned more than one theme within their one comment (i.e., the total number of comments within a given category is less than the sum of all themes).

Frivolous Complaints (36% of those who provided comment)

Comments concerning frivolous complaints made up the largest group of recurring themes found in the comments provided by survey participants. One-third of all officers who provided an answer to this survey question noted that they felt it was too easy for a citizen to make a groundless complaint. Comments included the sentiment that there should be an avenue for either the department or the OPCC to dismiss frivolous complaints instead of continuing with an investigation, that these types of complaints are a waste of resources, that complainants who lodge groundless complaints should be charged with mischief, or that there should be some means for redress for officers who have groundless complaints laid against them.

Several officers also mentioned that they did not believe that people should be allowed to file third party complaints, noting their belief that these types of complaints are often based on hearsay, are derived from a story they heard or saw on television, or are lodged by people who have not witnessed enough of the incident to fully understand (or be able to recount) the incident.

A couple of participants also noted that complaints that are outside of the allowable timeframe (i.e., one year) should not be investigated under any circumstances because respondent officers may not remember enough detail about the incident in order to provide an accurate statement of events.

OPCC (24% of those who provided comment)

This category is comprised of any comment made about the OPCC. Comments related to the OPCC included:

- A poor relationship exists between the OPCC and various police departments' internal investigations staff;
- The OPCC has a political agenda pointed at keeping itself afloat; and
- The OPCC has a deep-seeded bias against police officers.

A few participants noted that the OPCC needs to make more of an effort to improve awareness and education regarding the role of the Office so that the police and the public could better understand the service they provide and come to understand that BC already has a civilian oversight body.

Sway (23% of those who provided comment)

Comments counted under this category pointed to the opinion that the process for handling complaints against the police was subject to the influence of negative public perceptions, political agendas of key players, negative media reports, and the activities of special interest groups (i.e., Pivot Legal Society and British Columbia Civil Liberties Association).

Not Timely, Consistent, or Fair (20% of those who provided comment)

Comments coded within this section pointed to the notion that the complaints process is not timely, consistent, or fair. The majority of these participants reported that: the process takes too long; investigations are sometimes subject to internal biases (i.e., whether to investigate or not and how to handle the investigation); and discipline is not applied consistently within departments, nor is the investigation process itself conducted consistently across the eleven departments.

Management Issues (18% of those who provided comment)

According to survey participants, management issues related to the process for handling complaints against the police included a drain on financial and manpower resources (particularly with regard to frivolous complaints), issues surrounding training and work experience for investigators charged with investigating complaints (participants noted that some internal investigators lack the experience to competently conduct investigations), and the fact that respondent officers who have been complained about will have increased stress and reduced morale regardless of whether the complaint is substantiated or not.

Officer's Rights (15% of those who provided comment)

Several individuals mentioned that they feel that their rights are violated when going through the process to investigate a complaint against the police. Officers noted that the standard of proof in this process is similar to that in civil law, and felt that they have been treated as if guilty until proven innocent. Participants also reported facing double jeopardy as they are subject to both the *Police Act* as well as the *Criminal Code*. Another area where officers felt their rights were violated is with regard to having to provide statements: some participants noted that having to submit their statements may be akin to forced self incrimination. Finally, officers also reported that that it was unfair that they could not question the complainant (i.e., "face their accuser") about the alleged event.

Police Act (8% of those who provided comment)

A few officers mentioned that the language of the text within the existing Police Act is verbose, complex, ambiguous, and often contradictory. Individuals also stated that the prescribed timelines and regulations create unnecessary administrative burden on one hand, and are lacking in others (i.e., there is no timeline requirement for OPCC to confirm the file closure). Additionally, a few officers also pointed to a desire for having timelines added with regard to the purging of employee records, particularly in regard to unsubstantiated or summarily dismissed complaints files.

Police Investigating Police (8% of those who provided comment)

Comments coded under this category referred to statements made by participants in regard to the notion of civilian oversight and issues related to police investigating police. Some of the points discussed by participants included: the potential for bias in favour of – or against – specific members when police investigate their own or having a civilian oversight body that lacks the experience or background to understand the realities of the policing environment. A couple of officers mentioned that other professions (such as lawyers and doctors) are investigated by members of their own professional body, and that the biggest concerns surrounding police investigating police is the negative public perception of that process.

RCMP (3% of those who provided comment)

Some of the participants pointed to a weakness in the existing process for handling complaints against the police by noting that RCMP officers within the province, who work with the municipal police on integrated teams, should be subject to the same requirements and regulations. This separation is sometimes seen as a double standard which creates tension between the two forces, particularly when the RCMP have been called in to assist in external investigations of municipal police. RCMP investigations into complaints against municipal police were also seen by some of the municipal officers as a difficult challenge for investigators who may not be familiar with Part 9 or *Police Act* Regulations.

Miscellaneous (11% of those who provided comment)

Comments coded under this category are comprised mostly of one-off types of statements that did not recur enough times to warrant a category placement of their own. The only exception to this was with regard to comments about issues surrounding the receipt of complaints by persons suffering from mental illness.

3 CONCLUSION

Findings from this research suggest that education and awareness need to improve in order for sworn members to adequately understand their rights and responsibilities regarding the process for handling public complaints against the police. Training and education fall under the mandate of both the OPCC and department authorities. Three-quarters of all those who responded to the survey noted specifically that they would like further training and information on the subject. Training in regard to the intricacies of the *Police Act*, the steps of the process for handling complaints, and the rights of respondents would be useful for all members. Some participants also felt it would be beneficial for Professional Standards investigators to have further training (hands-on or through formal methods) regarding investigative and interviewing skills.

Throughout the findings presented in this paper, demographic analysis has pointed to consistent themes for one particular group of participants: Constables with few years of service working in general duty and Targeted Enforcement Teams seem to be the least satisfied with the process, the most in need of training, the most likely to be involved as respondent officers, the least likely to have been in contact with the OPCC, and the least likely to think that disciplinary measures are appropriate and applied consistently. Targeted training toward this specific group would likely reap the most benefits.

In general, confidence in the OPCC could be improved through increased awareness of their role and oversight activities. Officers appreciate the ability of the OPCC to contribute to public confidence in the process for handling complaints, ensuring shared standards, and overseeing investigations, but specific criticism of the Commissioner and the Office points to a belief that the OPCC is biased against police and prone to influence and suggestion of politics, media, public, and special interest groups. Some participants have noted that increased awareness of their role and oversight activities, whether through education and training, contact with respondent officers even by letter, and/or through clearly defined and legislated authority, would contribute to police confidence in the role of the Office.

Police confidence with the process overall can be improved through changes to the *Police Act*, work to improve timelines and consistency of investigations, management and union attention to stress and morale-related issues when officers are involved in complaints, increased awareness of individual roles and responsibilities throughout the process, and through efforts to increase public confidence in the system.

ANNEX I: INVITATION AND QUESTIONNAIRE

To: <Rank> <Firstname> <Lastname>

From: Kevin Begg

Subject: Police Awareness Survey

I am writing to request your participation in a survey regarding your awareness of and experiences with the process for handling complaints against the police. Every sworn member from the 11 municipal police departments has been invited to participate. Information gathered from this survey will be used to inform the review of the Police Complaints Process, recently ordered under section 42 of the Police Act. The province has appointed Joe Wood to lead this review.

This survey is voluntary, and you can help us by taking 10 minutes to share your thoughts and opinions. Completing this survey is your opportunity to have input into the review. Responses are requested by 8:30 am, Monday November 14th, 2005.

To access the survey:

- Go to http://www.surveys.gov.bc.ca/logins/policeawareness.html
- Type in the Login Code <########>

Thank you in advance for your participation

Kevin Begg
Assistant Deputy Minister and Director of Police Services

CONFIDENTIALITY:

This survey is being conducted by BC STATS. Data collected for this survey are protected under the authority of the Statistics Act. Under Section 9 of the Statistics Act., BC STATS cannot disclose information that could be used to identify an individual return to any person, organization or government agency. Section 9 of the Statistics Act applies despite the provisions of the Freedom of Information and Protection of Privacy Act (FOIPPA), other than Section 44(2) and 44(3) of FOIPPA.

As such, please be assured that your answers will remain completely confidential. When you submit your completed questionnaire your name is never connected to your answers in any way. Demographic information provided by your Chief may be linked to your responses; however, only grouped results will be reported to the Police Complaints Process Review Team. BC STATS will make every effort to remove any information you write in open-ended comments that could potentially be used to identify you. To help preserve your anonymity, we strongly recommend that you avoid personalizing your comments.

ADDITIONAL DETAILS:

If you have any questions about this survey or concerns about confidentiality, you may call a member the Review Team or the BC STATS survey administrator:

Review Team (604) 660-2906

BC STATS 888-447-4427 (ext.4)
250-387-0332 in Victoria
BCStats.SurveyMail3@gov.bc.ca

Ministry of Public Safety and Solicitor General
Police Awareness Survey

When responding to questions regarding your police department, please refer to your experiences within the department you are currently employed.

This survey should take less than 15 minutes to complete.

> **CONFIDENTIALITY**: Responses to this questionnaire will be kept confidential by BC STATS. Under Section 9 of the *Statistics Act*, BC STATS cannot disclose information that could be used to identify an individual return to any person, organization or government agency. Section 9 of the Act applies despite the provisions of the *Freedom of Information and Protection of Privacy Act*.
>
> Comments are generally the most valuable part of the survey. All comments provided in the comment boxes will be provided verbatim; however, prior to release, BC STATS will remove any identifying information so that you will remain anonymous. To help preserve your confidentiality, we recommend that you avoid personalizing your comments.

Begin >

AWARENESS OF THE POLICE COMPLAINTS PROCESS

1. If a member of the public wishes to make a complaint against your department or a police officer employed within your department, where can they make this complaint? *Please check all that apply.*

   To the Chief
   To the departmental discipline authority
   To the Professional Standards (Internal Investigations) unit
   To the senior officer on duty
   At the Office of the Police Complaints Commissioner
   Other, please specify ______________
   Don't Know

	Yes	No	Don't Know
2. Can you, as a police officer, make a confidential complaint to the Police Complaints Commissioner regarding the misconduct of any other police officer?			
3. During investigation, can information about the complaint be withheld from the respondent officer if the Police Complaints Commissioner or the Discipline Authority believes that disclosure would compromise investigation?			
4. Are respondent officers *required* to provide investigators with a statement outlining their own version of events?			
5. Are witness officers *required* to meet with investigators and answer their questions?			
6. Are witness officers *required* to testify (if requested by an adjudicator) at public hearings and inquiries into complaints against the police?			
7. Can an investigation take place, even if the complainant has withdrawn their complaint?			

8. Have you ever read Part 9 of the *Police Act* regarding complaints against the police?

Yes
No
Don't Know / Don't Remember

9. Have you ever read your department's policies and procedures with regard to complaints against the police?

Yes
No
Don't Know / Don't Remember

10. What type of training have you received with regard to the police complaints process? *Please check all that apply.*

Recruit Training
In-service courses (i.e., JIBC Police Academy)
Department Orientation
Department Directives/Standing Orders
Special workshops/lectures (e.g., from the Office of the Police Complaints Commissioner)
Other, please specify ________________
Have not received any training

11. Do you think the information and training you have received regarding the complaints process is sufficient enough for you to understand your role in the complaints process?

    Yes

    Somewhat

    No

    Don't Know

12. Would you like to receive additional information or training regarding the complaints process?

    Yes

    No

    Don't Know

EXPERIENCE WITH THE POLICE COMPLAINTS PROCESS

Do you believe investigations into complaints involving your department are conducted...	**By internal investigators from within your department**			**By external investigators from another department**		
	Yes	**No**	**Don't Know**	**Yes**	**No**	**Don't Know**
13. ...in a timely manner?						
14. ...without bias?						
15. ...with due diligence?						

16. Do you believe disciplinary measures with regard to complaints against the police involving your department are applied consistently?

    Yes

    No

    Don't Know

17. In general, do you believe disciplinary measures with regard to complaints against the police within your department are appropriate, too harsh, or too lenient?

    Too harsh

    Appropriate

    Too lenient

    Don't Know

18. In the past 2 years, has a member of the public approached you with regard to making a complaint against your department or a police officer employed within your department?

    Yes

    No

19. In the past 2 years, have you had a formal complaint filed against you by a member of the public *and/or* acted as a witness officer during the processing of a complaint against another officer? *Please check all that apply.*

Yes, I have had a complaint filed against me – Go to Q20

Yes, I have acted as a witness officer – Go to Q20

Yes, I have acted as a witness officer and had a complaint filed against me – Go to Q20

No – Go to Q23

Please answer the following 3 questions with regard to the most recent complaint you were involved in (either as a witness officer or as a respondent officer).

Do you believe the investigation into that particular complaint was conducted…	**Yes**	**No**	**Don't Know**
20. …in a timely manner?			
21. …without bias?			
22. …with due diligence?			

OFFICE OF THE POLICE COMPLAINTS COMMISSIONER

23. Are you aware of the role of the Office of the Police Complaints Commissioner for British Columbia?

Yes

No – <Pop-up with Role of the OPCC>

Role of the OPCC:

The Office of the Police Complaints Commissioner (OPCC) is responsible for overseeing the handling of complaints against municipal police to ensure they are handled fairly and impartially. The OPCC ensures that all complaints are thoroughly and professionally investigated by the police. The Commissioner may request additional investigation either by the same investigators or by an external agency, and may arrange for a Public Hearing.

Persons wishing to make a complaint may do so either to the OPCC or to the Police Department involved in the complaint. Staff at either location will:

- Ensure that the complainant understands the process,
- Ensure that the complainant understands their rights under the Police Act,
- Assist the complainant by providing necessary information, and
- Provide information about informal resolution or mediation.

24. Have you ever been in contact with the Office of the Police Complaints Commissioner?

Yes

No

Don't Know / Don't Remember

25. How would you rate your level of confidence with the performance of the Office of the Police Complaints Commissioner?

Very Confident
Confident
Neutral
Not Very Confident
Not Confident At All
Don't Know / No Opinion

OVERALL OPINIONS

When answering these next three questions, please reflect on all levels of the police complaints process (i.e., internal processes, internal and external investigations, the role of the Office of the Police Complaints Commissioner, etc.).

26. How would you rate your level of confidence with the *overall* process for handing complaints against the police?

Very Confident
Confident
Neutral
Not Very Confident
Not Confident At All
Don't Know / No Opinion

27. What do you think are the strengths of the current police complaints process?

____

____

28. What do you think are the weaknesses of the current police complaints process?

____

____

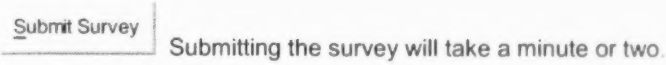
29. How many years, in total, have you been employed as a Police Officer? ______

30. Please select the assignment group which best describes your basic job functions or responsibilities:

Corporate Functions (i.e., HR services, strategic planning, research, training/education)
Administration/Document Services/PRIME
Professional Standards/Internal Investigations
Investigations (i.e., Forensics, Homicide, Gang Surveillance, Fraud, Missing Persons)
Targeted Enforcement Teams (i.e., Traffic, Drug Squad, Dog Squad, ERT)
General Duty/Patrol
Community Policing/Youth Liaison
New Recruit/Block Training
Other, please specify ______________________________

Contact info page: *(only for those who said yes in Q19)*

If you would like to participate in an interview, you can call the review team to arrange one. The telephone number in Vancouver is (604) 660-2906. If you are calling from outside the lower mainland, please feel free to call collect.



Submitting the survey will take a minute or two.

ANNEX II: COMPARISON OF POPULATION TO RESPONDENT GROUP

Group	% Population	% Sample	% Difference
Oak Bay	1%	2%	1%
Central Saanich	1%	2%	1%
West Vancouver	3%	5%	1%
Victoria	10%	13%	3%
Saanich	7%	9%	1%
Abbotsford	7%	8%	1%
Nelson	1%	1%	0%
Port Moody	2%	2%	0%
New Westminster	5%	5%	0%
Delta	7%	6%	0%
Vancouver	56%	50%	**-6%**
Staff Sergeant	1%	2%	1%
Superintendent / Inspector	3%	4%	1%
Executive	1%	2%	1%
Corporal	0%	1%	0%
Sergeant	13%	18%	4%
Detective	1%	2%	0%
Constable	80%	72%	**-8%**
Professional Standards	1%	1%	1%
Other Assignments	2%	4%	2%
Investigations	17%	21%	4%
General Duty / Patrol	47%	48%	1%
Community Policing / Youth Liaison	4%	4%	0%
Administration / Document Services / Prime	3%	2%	0%
Corporate Functions	8%	6%	-1%
Targeted Enforcement Teams	16%	12%	-5%
New Recruit / Block Training	4%	1%	-3%
Less than 5 years	38%	27%	**11%**
6 to 10 years	19%	18%	1%
11 to 15 years	13%	13%	0%
16 to 20 years	13%	17%	-4%
21 to 25 years	11%	13%	-2%
Greater than 25 years	6%	11%	-5%
Grand Total	**100%**	**100%**	**0%**

ANNEX III: OVERALL RESULTS TABLES

Table 40: Overall Awareness Results

#	Awareness Questions	%
1	If a member of the public wishes to make a complaint against your department or a police officer employed within your department, where can they make this complaint?	
	To the Chief	76%
	To the departmental discipline authority	60%
	To the Professional Standards (Internal Investigations) unit	80%
	To the senior officer on duty	87%
	At the Office of the Police Complaints Commissioner	81%
	Other (Any member, supervisor, or department; PIC; telephone, web, or email; police board)	12%

Table 41: Overall Knowledge Results

#	Knowledge Questions	% Yes	% No	% Don't Know
2	Can you, as a police officer, make a confidential complaint to the Police Complaints Commissioner regarding the misconduct of any other police officer?	67%	5%	28%
3	During investigation, can information about the complaint be withheld from the respondent officer if the Police Complaints Commissioner or the Discipline Authority believes that disclosure would compromise investigation?	58%	10%	31%
4	Are respondent officers required to provide investigators with a statement outlining their own version of events?	58%	33%	9%
5	Are witness officers required to meet with investigators and answer their questions?	70%	16%	14%
6	Are witness officers required to testify (if requested by an adjudicator) at public hearings and inquiries into complaints against the police?	75%	5%	20%
7	Can an investigation take place, even if the complainant has withdrawn their complaint?	86%	2%	12%
8	Have you ever read Part 9 of the Police Act regarding complaints against the police?	44%	28%	28%
9	Have you ever read your department's policies and procedures with regard to complaints against the police?	69%	18%	13%

Table 42: Overall Training Results

#	Training Questions	% Yes
10	What type of training have you received with regard to the police complaints process?	
	Recruit Training	63%
	In-service courses (i.e., JIBC Police Academy)	27%
	Department Orientation	39%
	Department Directives/Standing Orders	34%
	Special workshops/lectures (e.g., from OPCC)	16%
	Other (Union training, promotional or increment exams, personal experience, agent's course, team training, personal interest, previous experience in internal investigations, conference or workshop attendance, and word of mouth)	14%
	No Training	9%
11	Do you think the information and training you have received regarding the complaints process is sufficient enough for you to understand your role in the complaints process?	
	Yes	21%
	Somewhat	43%
	No	35%
12	Would you like to receive additional information/training regarding the complaints process?	72%

Table 43: Overall Opinion Results

#	Opinion Questions	% Yes	% No	% Don't Know
13	Do you believe investigations into complaints involving your department are conducted…			
	In a timely manner by internal investigators?	69%	16%	15%
	In a timely manner by external investigators?	30%	19%	51%
14	With due diligence internal investigators?	79%	7%	14%
	With due diligence external investigators?	38%	10%	52%
15	Without bias by internal investigators?	74%	11%	15%
	Without bias by external investigators?	34%	16%	50%
16	Do you believe disciplinary measures with regard to complaints against the police involving your department are applied consistently?	46%	24%	29%
17	In general, do you believe disciplinary measures with regard to complaints against the police within your department are appropriate, too harsh, or too lenient?			
	Too harsh	10%	-	-
	Appropriate	58%	-	-
	Too lenient	3%	-	-
	Don't Know	28%	-	-

Table 44: Overall Experience Results

#	Experience Questions	% Yes
18	In the past 2 years, has a member of the public approached you with regard to making a complaint against your department or a police officer employed within your department?	54%
19	In the past 2 years, have you had a formal complaint filed against you by a member of the public and/or acted as a witness officer? *Total Respondent/Witness/Both*	
	Respondent	28%
	Witness	8%
	Both	12%
20	Investigation into that particular complaint was conducted in a timely manner	75%
21	Without bias	83%
22	With due diligence	86%
23	Are you aware of the role of the OPCC?	89%
24	Have you ever been in contact with the OPCC?	23%

Table 45: Overall Level of Confidence Results

#	Level of Confidence Questions	% Very Confident	% Confident	% Neutral	% Not Very Confident	% Not Confident At All
25	Level of confidence with the performance of the OPCC?	5%	18%	37%	22%	18%
26	Level of confidence with the overall process?	7%	42%	30%	16%	5%

REPORT ON THE PUBLIC AWARENESS SURVEY CONDUCTED FOR THE REVIEW OF THE POLICE COMPLAINT PROCESS IN BRITISH COLUMBIA

SUBMITTED BY:

Police Services Division
September 2006

TABLE OF CONTENTS

EXECUTIVE SUMMARY 4

1 INTRODUCTION AND METHODOLOGY 5

2 FINDINGS 8
- 2.1 Confidence with Police Complaint Process 8
  - 2.1.1 Reasons for Confidence 9
  - 2.1.2 Reasons for Lack of Confidence 11
- 2.2 Police Investigating Police 11
- 2.3 Experience with Police and with Filing a Complaint 12
- 2.4 Awareness of the OPCC 13

3 CONCLUSION 14

ANNEX I: QUESTIONNAIRE 15

ANNEX II: RESULTS TABLE 20

EXECUTIVE SUMMARY

As part of the review of the police complaint process, Police Services Division implemented a public awareness survey across the 11 municipalities policed by independent forces. The purpose of this research was to:

- Measure awareness of the process for handling complaints against police;
- Measure satisfaction with the complaints process; and
- Provide an opportunity for the police complaint review team to understand some of the issues surrounding public awareness of the police complaint process.

In November of 2005, a total of 1,024 residents from the 11 communities completed the survey via telephone in one of four languages: English, Cantonese, Mandarin, or Punjabi. The sample of respondents was selected through random-digit dialling, and was designed to match the BC population in regard to gender, age, and ethnic or racial origin.

The major findings of this survey are as follows:

- **Confidence:** Just over half of all participants (55%) reported that they are confident or very confident with the existing process for handling complaints against the police. In comparison, 27% provided neutral responses, and 18% said that they were not very confident or not confident at all.
- **Reasons for Confidence:** The most recurring explanations provided when participants reported confidence with the process include:
    - Trust in the system;
    - Positive interaction with police; and
    - Positive media reports.
- **Reasons for Lack of Confidence:** The most recurring explanations provided when participants reported a lack of confidence with the process include:
    - Belief that police should not investigate police;
    - Negative interaction with police; and
    - No trust in the process.
- **Fairness of Local Police:** 78% believe investigations into complaints against the police are conducted fairly in their local police department.
- **Experience with Police:** 26% noted that they have not had any direct contact with the police.
- **Awareness of OPCC:** 61% were not aware of the role of the Office of the Police Complaint Commissioner.

1 INTRODUCTION AND METHODOLOGY

As part of the review of the police complaint process, Police Services Division contracted with BC Stats to implement a public awareness survey across the 11 municipalities policed by independent forces. The purpose of this research was to:

- Measure the awareness of the existing process for handling complaints against the police;
- Measure satisfaction with the complaints process; and
- Provide an opportunity for the police complaint review team to understand some of the issues surrounding public awareness of the police complaint process.

In November of 2005, a total of 1,024 residents from the 11 communities completed the survey via telephone in one of four languages: English, Cantonese, Mandarin, or Punjabi. The sample of respondents was selected through random-digit dialling, and was designed to represent population distributions across the municipalities (see Table 1). Please see Annex I for a copy of the invitation script and the questionnaire.

Table 1: Municipalities by Survey Completes[1]

City	Size of Population[2]	% of Population	# of Respondents	% of Respondents
Abbotsford	126,634	11%	90	9%
Central Saanich	16,451	1%	17	2%
Delta	101,843	9%	60	6%
Nelson	9,784	1%	17	2%
New Westminster	58,286	5%	62	6%
Oak Bay	18,357	2%	21	2%
Port Moody	26,613	2%	25	2%
Saanich	109,639	9%	124	12%
Vancouver	583,296	50%	481	47%
Victoria	77,538	7%	94	9%
West Vancouver	43,867	4%	33	3%
TOTAL	**1,172,308**	**100%**	**1,024**	**100%**

---

[1] This table lists the population of each municipality included in the survey as well as the number of people in each municipality who completed the survey. Both absolute numbers and percentages are provided. For example, the population figure for Abbotsford was 126,634, which represented 11% of the total population of 1,172,308. Ninety people from Abbotsford completed the survey, which represented 9% of the total 1,024 people who completed the survey. This means that while Abbotsford residents made up 11% of the total population, they represented a slightly smaller share of survey respondents (9%). This variance (-2%) does not affect the representativeness of the sample.

[2] Population estimate, 2004. Source: BC Stats.

Respondent demographics also matched that of the BC population in regard to gender, age, and ethnic or racial origin. Three-quarters of the respondents identified themselves as being white, with the largest groups of visible minorities being Chinese (10%) and South Asian (4%). The majority of participants (59%) were employed outside the home, 17% were retired, 11% reported being in school, and 10% work within the home. Seven percent (7%) of the participants identified themselves as persons with a disability. See Table 2 for further detail.

Table 2: Respondent Demographics

Demographic	# of Respondents	% of Respondents
Age		
< 20	35	3%
20-29	163	16%
30-39	228	22%
40-49	232	23%
50-59	159	16%
60 +	203	20%
Gender		
Female	605	59%
Male	419	41%
Language		
English	1,000	98%
Chinese	18	2%
Punjabi	6	1%
Ethnicity/Cultural Background[3]		
White	768	75%
Chinese	107	10%
South Asian	40	4%
Filipino	18	2%
Aboriginal/First Nations/Indian	16	2%
Black	8	1%
Latin American	8	1%
South East Asian	7	1%
Japanese	6	1%
Arab/West Asian	4	< 1%
Korean	3	< 1%
Other/Mixed Ethnicity	15	1%
Employment Status		
Employed Outside Home	600	59%
Retired	178	17%
In school	113	11%
Working in the home	104	10%
Not employed/in school	60	6%
Self-Employed	6	1%
On Disability	5	< 1%
Person with Disability	72	7%

---

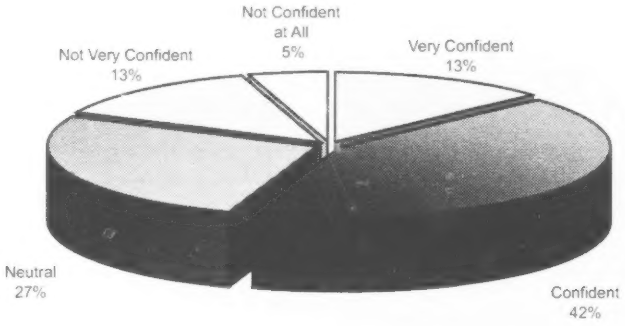
[3] These categories are derived from the Statistics Canada 2001 Canadian Census.

The sample of 1,024 yields a margin of error of ±3.0 percentage points at the 95% confidence level on the key question, "How would you rate your level of confidence with the overall process for handing complaints against the police?" Fifty five percent (55%) responded "Very confident" or "Confident". This means that if this survey was repeatedly administered, between 52% and 58% of respondents would be confident with the process for handling complaints against the police, 19 times out of 20. Annex II contains overall results for each question.

2 FINDINGS

2.1 CONFIDENCE WITH POLICE COMPLAINT PROCESS

As noted, slightly more than half of all respondents (55%) reported confidence with the existing process for handling complaints against the police. In comparison, three in ten provided neutral responses when asked this key question, while roughly one in five said that they were not very confident or not confident at all.



Some of the smaller jurisdictions were the most likely to receive the highest confidence ratings. Although it is not possible to accurately compare all municipalities due to the size of the respondent populations, larger municipalities, including Vancouver, ranged from 49% to 65% of respondents who reported confidence with the police complaint process. Respondents within Oak Bay, Port Moody, and West Vancouver rated their level of confidence with the police complaint process at a much higher level compared to similar size locations, such as Central Saanich or Nelson. See Table 3 for detail.

Table 3: Confidence with the Overall Police Complaint Process by Municipality

City	# of Respondents	% Confident & Very Confident	% Neutral	% Not Very Confident & Not at All	# Don't Know
Oak Bay	21	76%	18%	6%	4
Port Moody	25	75%	17%	8%	1
West Vancouver	33	71%	13%	16%	2
Saanich	124	65%	26%	9%	14
Abbotsford	90	63%	21%	16%	9
Delta	60	61%	28%	11%	6
Central Saanich	17	57%	36%	7%	3
Victoria	94	51%	35%	14%	6
Vancouver	481	50%	28%	22%	45
New Westminster	62	49%	25%	25%	7
Nelson	17	36%	21%	43%	3
TOTAL	**1,024**	**55%**	**27%**	**18%**	**100**

There was concern about data received from survey participants within Nelson. Findings from this jurisdiction may not be valid due to the potential for participant confusion between the Nelson Police Department and the local area RCMP. These two police agencies have recently integrated a number of policing services. This topic was discussed with Nelson Police Department staff and a Police Board representative who confirmed the question of public confusion between the two police forces. As such, caution should be used when reviewing data regarding Nelson.

Public confidence with the overall process for handling complaints against the police may be impacted by whether or not one has experience dealing with the police and whether that experience was positive or negative. One quarter (26%) of the respondent population made a point of stating that they have had no contact with the police (this question was not asked on this survey because it was too sensitive and because public opinion can be based on a variety of factors, not simply direct experience alone). Of those who mentioned that they had no contact with the police, 49% provided neutral confidence ratings, 43% reported being confident, and 8% reported a lack of confidence.

All participants were asked to explain their reasons for stating that they were confident, neutral, or not confident with the process for handling complaints against the police. Table 4 is organized by confidence level (confident, neutral, and not confident) and shows the variety of comments provided. When reading Table 4, it is important to note that not all participants provided a comment, while others may have provided more than one reason for their level of confidence.

2.1.1 REASONS FOR CONFIDENCE

Of those who reported confidence in the process (55%), 515 individuals (or 50% of the respondent population) provided 548 reasons as to why they were confident. The reasons most often cited were trust in the system, positive experiences with the police, and hearing positive media reports. Table 4 shows the reasons for confidence grouped into descriptive themes based on their recurrence.

Trust in the System

Based on comments provided by participants who reported confidence with the process for handling complaints, an inherent trust in the system or in structured systems in general, is one of the main reasons for having confidence (mentioned by 29% of participants who provided comment).

Individuals who shared this type of comment pointed to their positive experiences with other government agencies, a general acceptance of the notion that if someone complains they will receive response, a belief that "most people try to do a good job", and trust that the system was built to address public concerns.

Table 4: Open-Ended Comments

Confidence Level and Theme	# of Comments	% of Comments	% of Respondents N=1,024
Confident ***(515 participants provided 548 comments)***	**548**	**100%**	
Trust in the system	158	29%	15%
No (bad) Experience with Police	117	21%	11%
Positive Experience with Police	87	16%	8%
Positive Media Reports	47	9%	5%
Faith in OPCC Oversight	39	7%	4%
Generally Positive But Feel Police Should Not Investigate Police	18	3%	2%
Recognition of Tough Job for Police	16	3%	2%
Notion that Complaints are Frivolous	11	2%	1%
Positive Word of Mouth	9	2%	1%
Positive Survey Description of OPCC	8	1%	1%
Positive Self Knowledge of Process	7	1%	1%
Miscellaneous	31	6%	3%
Neutral ***(196 participants provided 213 comments)***	**213**	**100%**	
No Experience	131	62%	13%
Police Investigating Police	18	8%	2%
Positive and Negative Media Reports	14	7%	1%
Positive and Negative Word of Mouth	7	3%	1%
Negative Experiences	6	3%	1%
Trust in the system	5	2%	< 1%
Faith in OPCC Oversight	5	2%	< 1%
Positive and Negative Experiences	3	1%	< 1%
Notion of Bias Toward Police	2	1%	< 1%
Lack of Knowledge About Process	2	1%	< 1%
Miscellaneous	20	9%	2%
Not Confident ***(171 participants provided 192 comments)***	**192**	**100%**	
Police Should Not Investigate Police	47	24%	5%
Negative Experience with Police	27	14%	3%
No Experience with Police	21	11%	2%
No Trust in the Process	14	7%	1%
Negative Media Reports	11	6%	1%
No Faith in OPCC Oversight	10	5%	1%
No Trust in Government/Bureaucracy	10	5%	1%
No Punishment Anyway	8	4%	1%

Negative Word of Mouth	7	4%	1%
Bias Exists in Favour of Police	7	4%	1%
Complaints Not Treated Seriously	5	3%	< 1%
Miscellaneous	25	13%	2%
Grand Total (882 participants provided 953 comments)	**953**	**100%**	**86%**

Positive Experience

Lack of experience with the police (21%) and direct positive experiences (16%) were also quoted as reasons why participants feel confident about the process for handling complaints. Responses categorized under these themes are different than the above 'trust in the system'. For example, when asked to explain why they reported being confident with the process, one participant responded with "because I've never had any complaints" and another stated "whenever I had to deal with [the police] it's always been a good experience."

Other Elements

Other elements that influenced participants' confidence with the process for handling complaints included attention to positive media reports (9%), and knowledge of the independence of Office of the Police Complaint Commissioner (the "OPCC") as an oversight body (7%). Please see Table 4 for a complete list of reasons provided by respondents as to why they reported being confident with the complaints process.

2.1.2 REASONS FOR LACK OF CONFIDENCE

Those who reported a lack of confidence with the complaints process were asked to explain why they were not confident. The 171 participants who reported a lack of confidence provided 192 distinct reasons which were grouped into thematic categories. The most often noted reasons included a sense that the process lacks independence through its reliance on internal investigations (mentioned by 24% of the respondents who provided comment), general negative experiences with the police (14%), and a lack of trust in the police or the complaints process in general (7%).

There is also some evidence to suggest that non-white[4] respondents were more likely to report a lack of confidence with the process compared to Caucasian respondents (45% to 58%, respectively). The ethnic groups who reported the highest levels of non-confidence include South Asian, Black, Arab/West Asian, and South East Asian; however, the respondent populations were not large enough to make this determination conclusively.

2.2 POLICE INVESTIGATING POLICE

Even though police investigating police was cited as the most common reason for a lack of confidence with the complaints process, more than three-quarters (78%) of all respondents thought investigations into complaints were conducted fairly by their own police departments.

Results across all included municipalities were similar in regard to a high number of participants who reported that they believe investigations into complaints against the police are conducted fairly. However, there is some evidence to suggest that municipalities where citizens were more likely to report belief in the fairness of their department's internal investigations were generally more likely to report higher levels of confidence in the system overall. See Table 5 for information.

---

[4] The term non-white is used to denote the following ethnic groupings, as utilized by Statistics Canada in the 2001 Canadian Census: Aboriginal/First Nations/Indian, Chinese, South Asian, Black, Arab/West Asian, Filipino, South East Asian, Latin American, Japanese, and Korean.

The potential for contradiction between high ratings for local police complaint investigations, versus lower levels of confidence overall, suggests that elements other than concern regarding police investigating police likely contribute to varied rates of public confidence.

Table 5: Fairness of Complaints Investigations and Confidence with Overall Process by Municipality

City	% Who Believe Local Police Investigations are Conducted Fairly	% Confident or Very Confident with Overall Process
Port Moody	100%	75%
Oak Bay	94%	76%
Delta	90%	61%
Abbotsford	89%	63%
West Vancouver	86%	71%
Saanich	86%	65%
Victoria	79%	51%
Central Saanich	79%	57%
New Westminster	78%	49%
Nelson	73%	36%
Vancouver	70%	50%
TOTAL	**78%**	**55%**

2.3 EXPERIENCE WITH POLICE AND WITH FILING A COMPLAINT

Overall, 15% of the participants (148 people) reported having had concerns about the actions or comments of a police officer, or the service provided by their local police department within the past two years. Some of these concerns resulted from direct contact with the police and others developed as a result of media attention to police actions. By municipality, the percent of the participants who reported having had concerns about an officer or the department varies from 4% to 24% (though the sample sizes were too small to do an accurate comparison between municipalities).

Overall, two-thirds of those with concerns elected not to report those concerns to any group or individual (whether the complaint was the result of direct contact or not). Just under one-third of those with concerns (28% or 41 people) noted that they reported their concerns to a group or agency. Two-thirds (63%) of those who reported their concerns did so at their local police department; while 12% reported to a community agency or advocacy group, 5% to the OPCC, and 2% to their local government representative or via other means. Of the 41 individuals who reported their concerns to any group, only 15 recall being told of the steps they could take to address the complaint and one-quarter (10 people) filed a formal written complaint. The Police Department or OPCC followed up with or responded to the formal complaints of all 10. See Table 6.

Table 6: Reporting of and Response to Complaints

# Respondents	# With Concerns	# Raised Concerns with Any Group	# Raised Concerns with Police or OPCC	# Informed of Steps	# Filed Formal Complaint	# Received Response to their Formal Complaint
1,024	148	41	28	15	10	10

Those who mentioned that they had concerns but did not complain formally provided numerous reasons for not filing. Across municipalities and racial or ethnic groups, the top reasons why these participants did not formally complain include:

- 27% felt nothing would be done about the complaint;
- 19% did not know who to talk to;
- 16% felt the incident wasn't important enough;
- 12% said it was their word against an officer's;
- 12% dealt with the complaint in another way; and
- 8% feared retaliation from the police.

Some of the reasons selected above speak to issues of accessibility and confidence regarding the treatment of complaints against the police. These points can be compared to some of the open-ended comments made by those who were not confident with the overall process for handling complaints. Approximately 15% of participants who provided comment regarding why they were not confident noted that they did not trust the process for handling complaints, felt that there would not be punishment delivered to errant officers regardless of the outcome of the investigation, or that complaints in general are not treated seriously.

2.4 AWARENESS OF THE OPCC

Respondents were asked whether they were aware of the role of the OPCC, and, if so, how they had heard about the OPCC. Those who were not aware were provided with a description of the role and responsibilities and informed that, should they ever have a complaint, staff at either the OPCC or their local police department would be able to help them understand the complaints process.

Overall, 61% of respondents were not previously aware of the role of OPCC. This result did not differ significantly by municipality, however, when comparing ethnic background, 43% of Caucasian respondents reported being aware of the role of the OPCC compared to only 26% of those of other ethnic or racial background.

Of those who were aware of the role of the OPCC, three in five had read about the office in the newspaper, two in five learned via television, and less than one in five heard through word of mouth. Only 3% of the entire sample had ever had direct contact with the OPCC in past.

Open-ended comments provided by respondents regarding the OPCC suggest that there is some confusion regarding the role of the OPCC. A few individuals who reported a lack of confidence with the process overall appear to assume that the OPCC is an extension of the police department, or that the OPCC follows an American-style Police Commissioner model. Others questioned the level of independence of the OPCC, citing that the office has "too close of a tie to the Police Department."

On the other hand, some of the comments provided by those who reported confidence with the overall process showed that some participants believe that the OPCC is independent, but also believe it is the OPCC who conducts investigations and has the authority to question police officers as to their conduct.

3 CONCLUSION

Public opinion has shown that just over half of all respondents have confidence in the process for handling complaints against the police. As discussed throughout this report, concerns regarding the independence of investigations, negative experiences with the police in general, and a lack of trust contribute to this level of confidence with the process.

Increasing public awareness of the process is likely the single most important factor in increasing public confidence. Increased awareness of the steps that one could take to address a complaint, as well as increased awareness regarding the role and function of the OPCC, would allow BC residents to have greater trust in the system, knowledge of their own rights and means for redress, and knowledge of the process for 'checks and balances' provided by the OPCC (elements noted by those who did report having higher levels of confidence).

ANNEX I: QUESTIONNAIRE

Postal code screener ____________

Police Department ____________

Language conducted ____________

Gender ____________

OPENING SCRIPT:

Hello, I'm calling on behalf of BC Stats. BC Stats is conducting a study on people's perception of the provincial process for handling public complaints against the police. You have been randomly selected to participate in this voluntary survey. We will be conducting this survey with 1,000 BC residents, and all information we collect will be kept strictly confidential as guaranteed by the Statistics Act. Your name will never be connected to your answers in any way. We are asking for 10 minutes of your time to help us understand public views of the police complaints process. Are you interested in participating in this survey?

POLICE COMPLAINTS PROCESS:

1. **In the past 2 years, have you had concerns about the actions or comments of a police officer, or the service provided by the police department in your community?**
    - Yes
    - No – Go to Q7
    - Don't Know / Don't Remember – Go to Q7

2. **Did you raise your concerns with any of the following groups or individuals?**

Police Department
The Office of the Police Complaints Commissioner
MP / MLA / City Counsellor
Community Organization or Advocacy Group (i.e., Civil Liberties Association)
Other, please specify ____________

Did not raise concerns with anyone – Go to Q6
Don't Know / Don't Remember – Go to Q7

3. **Did the person or organization you raised your complaint with inform you of the steps you could take to address the complaint?**

Yes
No
Don't Know/ Don't Remember

4. **Did you file a formal written complaint with the Police Department or the Office of the Police Complaints Commissioner?**

Yes – Do not include Q6
No – Include Q6
Don't Know/ Don't Remember – Do not include Q6

5. **Did the Police Department or Office of the Police Complaints Commissioner follow up with or respond to your complaint?**

Yes
No

APPENDIX E

Substitute "raise your concerns" for "file a formal written complaint" depending on previous question

6. **What is the main reason you did not raise your concerns / file a formal written complaint? Check all that apply.**

Incident not important enough
Didn't know who to talk to
Language is an issue / they would not understand me
The process was too confusing
Dealt with it in another way
It's not part of my culture
No one can/will do anything about it
It's my word against a police officer's
Fear of retaliation from the police
I already did my part (i.e., gave verbal complaint)
Other, please specify ______________________________

OFFICE OF THE POLICE COMPLAINTS COMMISSIONER:

7. **Are you aware of the role of the Office of the Police Complaints Commissioner for British Columbia?**

   Yes

   No – explain the Role of the OPCC and Go to Q10

   Role of the OPCC:

   "The role of the Office of the Police Complaints Commissioner is to make sure complaints against municipal police are handled fairly. If necessary, the Commissioner can order an external investigation or call for a Public Hearing. If you wish to make a complaint, you can do so at your local Police Department or at the Office of the Police Complaints Commissioner. Staff at either location will help you understand the complaints process and your rights, and assist you in making sure you have all the information you would need to file a complaint."

8. **How did you hear about the Office of the Police Complaints Commissioner?**

   Word of mouth / Newspaper / TV / Posted Info / Radio / Website / Brochure /

   Referral from a police department / Community organization or advocacy group

   If Q2 answer included OPCC – Go to Q10

9. **Have you ever been in contact with the Office of the Police Complaints Commissioner?**

   Yes

   No

   Don't Know / Don't Remember

OVERALL QUESTIONS:

10. **How would you rate your level of confidence with the overall process for handing complaints against the police?**

    Very Confident – Go to Q13

    Confident – Go to Q13

    Neutral – Go to Q12

    Not Very Confident – Go to Q11

    Not Confident At All – Go to Q11

    Don't Know / No Opinion – Go to Q13

11. **Please explain why you are not confident with the overall process for handing complaints against the police. – Go to Q14**

    ____

    ____

12. **Please explain why you gave a neutral rating for the overall process for handing complaints against the police. – Go to Q14**

____

____

13. **Please explain why you are confident with the overall process for handing complaints against the police.**

____

____

14. **In your local police department, do you believe investigations into complaints against the police are conducted fairly?**

    Yes
    No
    Don't Know

DEMOGRAPHICS:

15. **What is your age?**

    Under 20
    20-29
    30-39
    40-49
    50-59
    60 or more years

16. **Do you consider yourself to be a person with a disability?**

    Yes
    No

17. **What is your racial or ethnic background?**

    White (e.g., French, German, Scottish, Irish)
    Aboriginal/First Nations/Indian
    Chinese
    South Asian (e.g., East Indian, Pakistani, Punjabi, Sri Lankan)
    Black (e.g., African, Haitian, Jamaican, Somali)
    Arab/West Asian (e.g., Armenian, Egyptian, Iranian, Lebanese, Moroccan)
    Filipino
    South East Asian (e.g., Cambodian, Indonesian, Laotian, Vietnamese)
    Latin American
    Japanese
    Korean
    Other, please specify ____________________

18. Regarding work, are you:

In school

Employed outside the home

Working in the home

Not currently employed / not in school

Retired

Other, please specify ______________________

CONTACT INFO PAGE: *(only for those who said yes in Q1)*

If you would like to participate in an interview, you can call the review team to arrange one. The telephone number in Vancouver is (604) 660-2906. If you are calling from outside the lower mainland, please feel free to call collect.

CLOSING SCRIPT:

Thank you very much for taking the time you participate in this survey. Your assistance is appreciated. Good bye.

ANNEX II: RESULTS TABLE[5]

#	Public Awareness Survey Results Overall	#	%
1	In the past 2 years, have you had concerns about the actions or comments of a police officer, or the service provided by the police department in your community?	148	15%
2	Did you raise your concerns with any of the following groups or individuals? *n=148*		
	Did not raise concerns	100	71%
	Department	26	18%
	Other	7	4%
	Community Organization / Advocacy Group	5	1%
	OPCC	2	1%
	MP / MLA / City Counsellor	1	0%
	Don't Know / Don't Remember	7	5%
3	Did the person or organization you raised your complaint with inform you of the steps you could take to address the complaint? *n=41*	15	37%
4	Did you file a formal written complaint with the Police Department or the Office of the Police Complaint Commissioner? *n=41*	10	26%
5	Did the Police Department or Office of the Police Complaint Commissioner follow up with or respond to your complaint? *n=41*	10	26%
6	What is the main reason you did not raise your concern / file a formal complaint? *n=129*		
	No one would do anything	35	27%
	Didn't know who to talk to	24	19%
	Incident not important enough	21	16%
	Other	15	12%
	My word against an officer's	15	12%
	Dealt with in another way	12	9%
	Fear of retaliation	10	8%
	Already did my part	3	2%
	Process too confusing	2	2%
	Not part of my culture, Language is an issue *mentioned once each*	2	2%
	Don't Know / No Opinion	9	7%
7	Are you aware of the role of the OPCC for British Columbia? yes	400	39%
8	How did you hear about the OPCC? *n=400*		
	Newspaper	224	58%
	TV	145	37%

---

[5] Results for questions 11-13 and 15-18 are not included in the Table because they are open-ended or demographic questions.

		Word of Mouth	54	14%
		Radio	32	8%
		At Work	22	6%
		Referral from a Police Department	11	3%
		Website	9	2%
		Public Knowledge	8	2%
		Family Member/Friend in the Police	7	2%
		Posted Info.	7	2%
		Community organization or Advocacy Group	6	2%
		News	4	1%
		Brochure	4	1%
		Lawyer	2	1%
		At School	2	1%
		Other	5	1%
		Don't Know	15	4%
9	Have you ever been in contact with the Office of the Police Complaint Commissioner?	*n=400*	13	3%
10	How would you rate your level of confidence with the overall process for handing complaints against the police?	*Confident*	512	55%
		Neutral	246	27%
		Not Confident	166	18%
		Don't Know No Opinion	100	
14	In your local police department, do you believe investigations into complaints against the police are conducted fairly?	*Yes*	588	78%

APPENDIX F

REPORT ON THE CORE AREA AWARENESS SURVEY CONDUCTED FOR THE REVIEW OF THE POLICE COMPLAINT PROCESS IN BRITISH COLUMBIA

SUBMITTED BY:

Strathcona Research Group
May 2006

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TABLE OF CONTENTS

REPORT ON THE CORE AREA AWARENESS SURVEY 6

INTRODUCTION 8

1 FINDINGS FROM THE STREET SURVEY 9
  1.1 Police Complaint Commissioner 9
    1.1.1 Knowledge of What to do with a Complaint 9
    1.1.2 Awareness of the Office of the Police Complaint Commissioner 9
  1.2 Police Complaint Process 10
    1.2.1 Fairness of the Complaint Process 11
    1.2.2 Experience with Treatment by Police 11
    1.2.3 Raising and Reporting Concerns 12
    1.2.4 Response to Raising/Reporting Concerns 14
    1.2.5 Low Income and Outcome of Complaint 15
    1.2.6 Level of Confidence in Police Complaint Process in BC 16

2 VARIATION BY SITE, GENDER, ETHNOCULTURAL BACKGROUND AND DIRECT EXPERIENCE 17
  2.1 Site Differences 17
    2.1.1 Participant Characteristics 17
    2.1.2 Police Complaint Commissioner 18
    2.1.3 Police Complaint Process 18
  2.2 Gender and Ethnocultural Background 21
  2.3 Direct Experience 22

3 FINDINGS FROM THE SOCIAL AGENCY SAMPLE 24
  3.1 Agency Characteristics 24
    3.1.1 Type of Agency 24
    3.1.2 Clients Served 25
    3.1.3 Legal Service and Referrals 25
  3.2 Agency Personnel Interviewed 25
    3.2.1 Positions and Experience 25
    3.2.2 Familiarity with Complaints Process 26
  3.3 The Police Complaint Process 26
    3.3.1 Complaints and Type of Referral 26
    3.3.2 Satisfaction 26
    3.3.3 Level of Confidence in Process 27
    3.3.4 Reporting by Marginalized People 27
    3.3.5 Role of the Agency 27
  3.4 Site Variation 27

4 DISCUSSION 29

APPENDIX 1: STUDY METHODOLOGY 31

APPENDIX 2: CHARACTERISTICS OF THE STREET SAMPLE 34

APPENDIX 3: LIST OF AGENCIES CONTACTED FOR THE STUDY 37

APPENDIX 4: CORE AREA AWARENESS SURVEY 38

APPENDIX 5: AGENCY QUESTIONNAIRE 44

LIST OF TABLES AND CHARTS

TABLES

Table 1: Concerns about police conduct (personal and witnessed) 11

Table 2: Q. 8 Which of the following statements best describe the main reason(s) why you did not raise your concerns or complaint? 13

Table 3: Q. 9 To which of the following groups or individuals did you raise your concerns? 13

Table 4: Comparison of participant concerns and follow-up steps 14

Table 5: Q. 11b What is/are the main reason(s) you did not raise your concerns or file a formal written complaint? 14

Table 6: Q. 13a If participant was not satisfied with experience with the police complaint process, why not? 15

Table 7: Q. 15a In what way do you think that being a person of low income affected the outcome of your complaint? 16

Table 8: Q. 17 Can you explain why you feel confident or not confident in the police complaint process? 16

Table 9: Selected participant characteristics by site 17

Table 10: Participant knowledge of police complaint process, by site 18

Table 11: Perceptions of the fairness of complaints, by site 18

Table 12: Why participants do not believe police complaints are handled fairly, by site 18

Table 13: Participants with concerns about police conduct, by site 19

Table 14: Did participants raise their concerns, by site 19

Table 15: Groups with which participants raised their concerns, by site 19

Table 16: Participants received the information they needed to address their complaints, by site 20

Table 17: Participants' perceptions of whether their complaints were treated seriously, by site 20

Table 18: Participants' satisfaction with the police complaint process, by site 20

Table 19: Participants' perceptions of the influence of low income on the outcome of police complaints in general, by site 20

Table 20: Participants' perceptions of the influence of their low income status on the outcome of their own complaints, by site 21

Table 21: Confidence levels in the police complaint process, by site 21

Table 22: Selected participant characteristics by gender and ethnocultural background 21

Table 23: Satisfaction with outcomes of police complaints by ethnocultural background 22

Table 24: Confidence in the police complaint process, by gender 22

Table 25: Concern about police conduct by housing status 22

Table 26: Relationship between concern about police conduct and perception of the fairness of the complaint process 22

Table 27: Relationship between direct experience and the belief that low income affects the outcome of a complaint 23

Table 28: Level of confidence in the complaint process by experience with police conduct 23

CHARTS

Chart 1: Proportion of Survey Participants by Site 9
Chart 2: Q. 2 Have you ever heard of the Office of the Police Complaint Commissioner before? 10
Chart 3: Q. 2a If yes, how did you learn about this? 10
Chart 4: Q. 2b How well do you think you understand what the Office of the Police Complaints Commissioner is supposed to do? 10
Chart 5: Q. 3 In your local police department, do you believe investigations into complaints against the police are handled fairly? 10
Chart 6: Q. 3a If no [to Q. 3], why not? 10
Chart 7: Q. 4 In the past two years, have you had any concerns about any actions or comments of a police officer that were directed towards you or involved you? 10
Chart 8: Q. 5 In the past two years, have you had any concerns about any actions or comments of a police officer that you witnessed but were not involved in? 11
Chart 9: Q. 6 How many times have you had concerns? 11
Chart 10: Q. 7 Did you raise these concerns with anyone? 12
Chart 11: Q. 10 Did the person or organization you raised your complaint with inform you of the steps you could take to address your complaint? 12
Chart 12: Q. 11 Did you file a formal written complaint with the police department or the Office of the Police Complaint Commissioner? 12
Chart 13: Q. 11a If yes, did the police department or the Office of the Police Complaint Commissioner follow up or respond to your complaints? 12
Chart 14: Q. 12 Do you feel your complaint was taken seriously? 15
Chart 15:Q. 13 Were you satisfied with your experience with the police complaint process? 15
Chart 16: Q. 14 Do you think that being a person with low income affects the outcome of a complaint? 15
Chart 17: Q. 15 If you answered yes to Q. 7, do you think that being a person with low income affected the outcome of your complaint? 15
Chart 18: Q. 16 What is your level of confidence in the overall process in British Columbia for handling complaints about police? 16

REPORT ON THE CORE AREA AWARENESS SURVEY

STREET SURVEY SUMMARY

- 299 individuals who were identified as being street-involved were surveyed in Vancouver, Victoria, and New Westminster.
- 37% of survey participants had heard of the Office of the Police Complaint Commissioner (OPCC).
- 60% of participants did not believe that investigations into complaints against the police are handled fairly, compared to 26% who believed they are handled fairly.
    - These results are led by Victoria and Vancouver where a greater percentage of participants believe that investigations into complaints are not handled fairly by their local department (68% and 60%, respectively).
    - Open-ended comments revealed a perception that police are biased and likely to protect their own members.
- 60% of the survey participants reported having had concerns about the actions or comments of a police officer in the past two years.
- 45% of all participants and 75% of those with concerns reported having such concerns three or more times over the past two years.
- Only 44% of participants with concerns ever raised them with anyone.
    - Participants in Victoria were much more likely to raise their concerns compared to other locations.
    - 64% raised their concerns with the police department, 53% with a community organization or advocacy group, 16% with an MP/MLA/City Councillor, 12% with lawyers, friends, or others, and only one participant reported approaching the OPCC.
- Primary reasons cited for *not* raising those concerns included:
    - 40% cited 'fear of retaliation from police'
    - 40% believed that 'no one would do anything'
    - 31% said that it was 'my word against a police officer'
    - 25% 'didn't know who to talk to'

- 66% of those who raised their concerns believed they were taken seriously while 32% did not believe they were taken seriously.
- Only 18 people or 12% of those who raised their concerns with anyone reported filing a formal complaint.
- Of those people who raised their concerns but did not file a formal complaint:
    - 38% cited 'fear of retaliation from police'
    - 25% said it was because of 'my word against a police officer'
    - 20% believed that 'no one would do anything'.
- Only 25% of survey participants expressed confidence in the police complaint process in BC compared with 43% who reported having little or no confidence in the process.
    - More participants from New Westminster reported confidence (42%) compared to Vancouver (23%) and Victoria (20%).
    - Fewer participants with direct experience with the police reported confidence (19%) compared to those without direct experience (32%).
- 74% of all survey participants reported believing that socio-economic status affects the outcome of police complaints.
- 78% of those who raised the concerns they had about police conduct said they believe that their low income status affected the outcome of their complaint.

AGENCY SURVEY SUMMARY

- Representatives from 44 social agencies that work with marginalized groups were also interviewed in the three study sites.
- 39% of participants were not familiar with the process available for members of the public to lay complaints against police.
    - Of those who were familiar with it (61%), 24% understood the process 'very well' and 76% only 'somewhat'.
    - Experience, word of mouth, and media reports were the most common methods for agency participants to find out about the process
- 91% of agency personnel reports that they have had clients come to them with a complaint about their treatment by the local police.
- 77% had referred a client with a complaint to a community advocate, 59% to a lawyer, 41% to the police department, 34% to an MP/MLA/City Councillor, and 11% to the OPCC.
- Overall, only 23% of the agency participants reported feeling satisfied about all the referrals they had made over time, though 56% would refer future complaints to police and 36% would refer to the OPCC.
- 23% of agency participants reported confidence in the police complaint process; 16% were neutral, and 50% were not confident.
- 70% of agency participants admitted to not having sufficient information about the process.

INTRODUCTION

This report documents the results of two surveys that were conducted by the Strathcona Research Group in January – February, 2006. As part of its Review of the Police Complaint Process, Police Services Division of the Ministry of Public Safety and Solicitor General contracted with Strathcona to conduct surveys with service providers and people who are street-involved in the core areas of the municipalities of Vancouver, Victoria, and New Westminster. The surveys are intended to augment the Review's telephone survey of one thousand participants in the eleven jurisdictions with independent police departments that examined public perceptions of the police complaint process.

The objective of the survey of street-involved individuals (called 'the street questionnaire') was to assess:

1. the degree to which people who are socio-economically marginalized have concerns about police conduct;
2. the extent to which those participants who do have concerns report them, as well as where they reported those concerns; and
3. the experiences of the participants who have pursued those concerns through the complaints process.

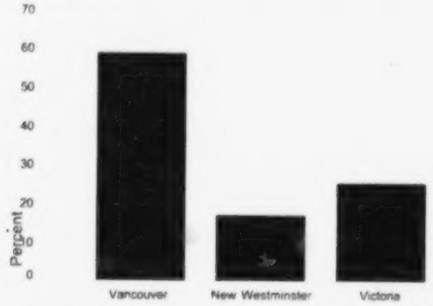
Given the relative importance of community service agencies in the lives of people who live or spend a lot of their time on the street and the frequency of contact between these two groups, the researchers also sought to assess:

1. the role of service providers both in receiving complaints about police conduct and their follow-up actions around such complaints;
2. responses regarding service providers' understanding of the police complaint process.

1 FINDINGS FROM THE STREET SURVEY

A total of 299 interviews were conducted: 174 (58% of the total) in Vancouver, 75 (25%) in Victoria, and 50 (17%) in New Westminster (see Chart 1).

Chart 1: Proportion of Survey Participants by Site



N=299

1.1 POLICE COMPLAINT COMMISSIONER

Participants were initially queried about what they know about the Office of the Police Complaint Commissioner (OPCC).

1.1.1 KNOWLEDGE OF WHAT TO DO WITH A COMPLAINT

In response to the question about knowing what to do in the event of having a complaint about police treatment, nearly as many participants claimed to know what to do (45%) as didn't (47%). Another 8% were 'not sure'.

1.1.2 AWARENESS OF THE OFFICE OF THE POLICE COMPLAINT COMMISSIONER

Only 112 or 37% of participants had heard of the OPCC (see Chart 2). For those participants who were aware of the OPCC, 40 (36%) participants had heard of it from friends or family, 30 (27%) from the media, 14 (13%) from a community agency or an advocacy group and the remaining 25 (23%) from a variety of other sources or could not remember (see Chart 3).

When those participants who had heard of the OPCC were asked how well they understood its role (n=112), 31 (28%) said 'very well', 52 (46%) said 'somewhat', and 24 (21%) said 'not well at all' (see Chart 4).

1.2 POLICE COMPLAINT PROCESS

Each participant was provided with an oral description of the police complaint process. They were then asked a number of questions regarding that process.

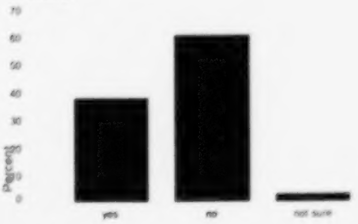


Chart 2: Q. 2 Have you ever heard of the Office of the Police Complaints Commissioner before?

N=298

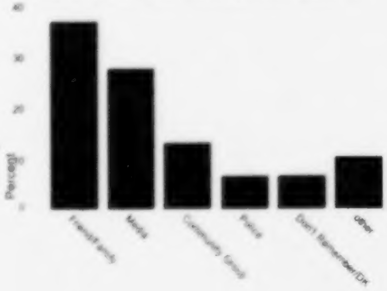


Chart 3: Q. 2a. If yes, how did you learn about this?

N=109

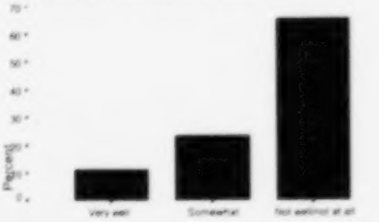


Chart 4: Q. 2b How well do you think you understand what the Office of the Police Complaints Commissioner is supposed to do?

N=278

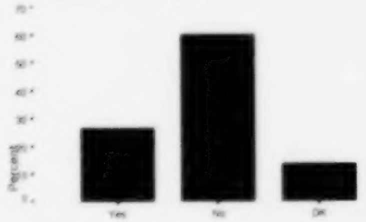


Chart 5: Q. 3 In your local police department, do you believe investigations into complaints against the police are handled fairly?

N=298

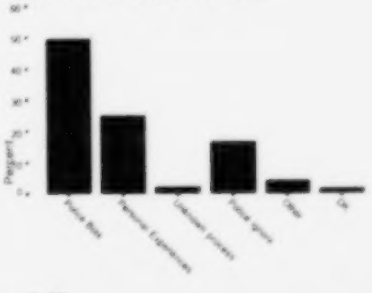


Chart 6: Q. 3a If no [to Q. 3], why not?

N=179

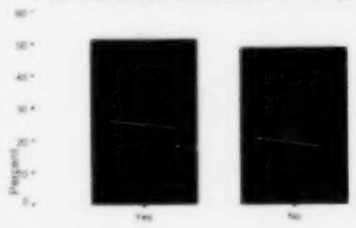


Chart 7: Q. 4 In the past two years, have you had any concerns about any actions or comments of a police officer that were directed towards or involved you?

N=298

1.2.1 FAIRNESS OF THE COMPLAINT PROCESS

When asked if they believed investigations into complaints against the police are handled fairly, 60% (179) of the participants said 'no', 26% (79) said 'yes' and 13% (40) didn't know (see Chart 5).

Of those who did not believe complaints were handled fairly (n=179), two thirds (67%) attributed this perceived unfairness either directly to the police (i.e., 'police are biased and protect their own' and 'police would ignore or not process the complaint') or to their own first-hand experience and/or that of friends who have experience with the process (25%). Four participants believed the process was unfair simply because people didn't know about or understand it (see Chart 6).

1.2.2 EXPERIENCE WITH TREATMENT BY POLICE

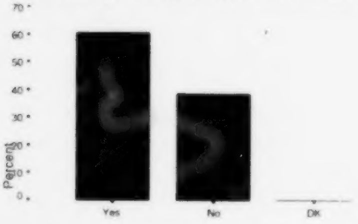
Just over one half of the people surveyed (51% or 153 participants) responded to the question about their own experiences with the police in the past two years by saying they had concerns about their treatment (see Chart 7). This proportion increased to 60% (179) when participants were asked about concerns they had regarding police conduct they had *witnessed* over the same time period (see Chart 8). As Table 1 shows, only 85 (29%) of participants reported having no concerns in either case while 123 (42%) had concerns about police conduct both toward them and which they had witnessed.

Table 1: Concerns about police conduct (personal and witnessed)

		Conduct witnessed						**Total**	
		Yes	**%**	**No**	**%**	**DK**	**%**	**%**	
Conduct towards self	**Yes**	123	42	29	10	1	.3	153	52
	No	56	19	85	29			141	48
Total		**179**	**61**	**114**	**39**	**1**	**.3**	**294**	**100**

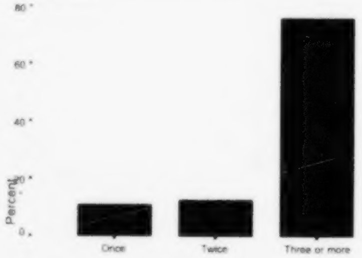
Of the 179 participants who expressed concerns, over three quarters (136 or 76%) said they had concerns three or more times over the past two years, 23 or 13% had concerns twice, and 20 or 12% had concerns only once (see Chart 9).[1]

Chart 8: Q. 5 In the past two years, have you had any concerns about any actions or comments of a police officer that you witnessed but were not involved in?



N=294

Chart 9: Q. 6 How many times have you had concerns?



N=179

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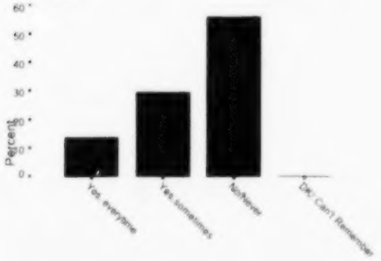
[1] There was an unusually high non-response rate to this question (Question 6). Of the 209 survey participants who could have answered, 30 did not offer a response. We are unsure of the reason for this.

1.2.3 RAISING AND REPORTING CONCERNS

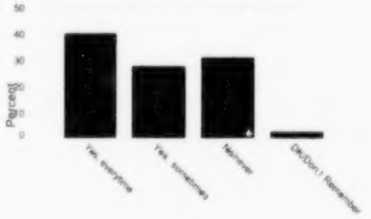
Despite the large number of participants having concerns, only 44% of those with concerns ever raised these issues with anyone (see Chart 10). Those who did not raise their concerns at all or only sometimes (in the case of those with multiple concerns) were asked to provide up to three reasons for not doing so. As Table 2 shows, the primary reasons for not pursuing a concern about police conduct relate directly to police conduct itself or to doubt about the process. Forty (40) percent of those who did not report their concerns cited 'fear of retaliation from police' for not reporting while 31% said they did not report because it would be 'my word against the police'. As well, 40% thought that 'no one would do anything' about their complaint.

Chart 10: Q. 7 Did you raise these concerns with anyone?



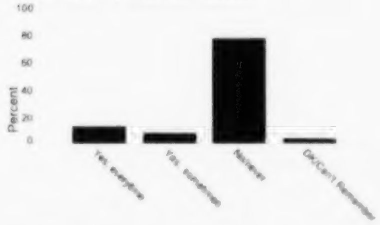
N=209

Chart 11: Q. 10 Did the person or organization you raised your complaint with inform you of the steps you could take to address your complaint?



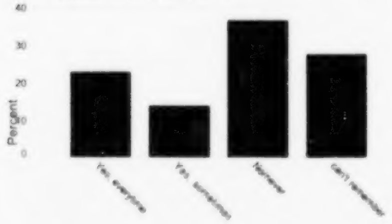
N=88

Chart 12: Q. 11 Did you file a formal written complaint with the police department or the Office of the Police Complaints Commissioner



N=90

Chart 13: Q. 11a If yes, did the police department or the Office of the Police Complaints Commissioner follow up or respond to your complaint?



N=22

Table 2: Q. 8 Which of the following statements best describe the main reason(s) why you did not raise your concerns or complaint?

	Frequency (n=179)	%
Fear of retaliation from police	72	40
No one would do anything	71	40
My word against police officer	56	31
Didn't know who to talk to	44	25
Incident not important enough	21	12
Process too confusing	11	6
Complained before but did no good	10	6
Dealt with in another way	10	6
Language issues	3	2
Not part of my culture	3	2
Other/Miscellaneous	35	20

Table 3 shows that the majority of participants who *did* raise their concerns went to the police (59 or 64%), to a community organization or advocacy group (48 or 53%), or to an MP/MLA/City Councillor (15 or 16%). A few (11 participants or 12%) raised their concerns with another source such as lawyers and friends. Participants also reported raising concerns with a doctor, a welfare worker, and local businesses. Only one participant reported approaching the OPCC.

Table 3: Q. 9 To which of the following groups or individuals did you raise your concerns?

	Concerns raised with				
	Police Dept./ Officer %	Community/ Advocacy Group %	MP/MLA/ City Councillor %	Other %	OPCC %
Participants (n=91)	65	53	16	12	1

These participants found that raising their concerns did not always move the situation forward. While 40% of this group reported 'always' being told of the steps they could take to address their complaints, 27% were only 'sometimes' given such information, and 31% reported 'never' being told of the necessary steps (see Chart 11).

The majority (78%) of those participants who raised their concerns with somebody did not file a formal, written complaint. Only 11 (12%) of participants said that they did so 'every time' while seven (8%) reported that they 'sometimes' filed a complaint (see Chart 12).

Although the number of participants who answered the question about whether the police department or OPCC followed up their complaint is quite small (n=22), 46% of those participants said yes (every time/ sometimes) and 36% said no. The remaining participants could not remember (27%) (see Chart 13).

Table 4 follows the number of participants who have had concerns about police conduct through raising concerns, receiving follow-up information, filing a formal complaint, and receiving a response to that complaint.

Table 4: Comparison of participant concerns and follow-up steps

Participants who				
Had concerns	Raised their concerns with someone	Were given information about the next steps to take with their complaint	Filed formal complaints	Received a response to their complaint
209	91	59	18	8

Table 5 shows that those who raised their concerns but did *not* file a written complaint (n=76) offered three main reasons for not doing so. Thirty-eight (38) percent cited 'fear of retaliation from police' while 25% did not file because they felt would be their 'word against [a] police officer'. The third main reason for not filing, cited by 20% of participants, was that they believed that 'no one would do anything'.

Table 5: Q. 11b What is/are the main reason(s) you did not raise your concerns or file a formal written complaint?

	Frequency (n=76)	%
Fear of retaliation from police	29	38
My word against police officer	19	25
No one would do anything	15	20
Process too confusing	11	14
Didn't know who to talk to	10	13
Complained before but did no good	10	13
Incident not important enough	8	11
Dealt with in another way	7	9
Already did part (complained)	7	9
Not part of my culture	2	3
Language issues	1	1
Other/Miscellaneous	7	9

1.2.4 RESPONSE TO RAISING/REPORTING CONCERNS

Although only a small number of participants with concerns reported ever raising them with anyone in a position to help them follow up, a majority of those who did so indicated that they believe those concerns were taken seriously. Of the 85 people who responded to the question, two-thirds believed their concerns were taken seriously all of the time or some of the time (each at 33%). Another third (32%) believed their complaints were never taken seriously (see Chart 14). Similarly, when asked if they were satisfied with their experiences with the police complaint process (n=76), a larger group were 'sometimes' satisfied (32%) or 'always' satisfied (22%) compared to the 42% who said they were not satisfied (see Chart 15). Dissatisfaction was based on a number of factors, including a perceived lack of progress or a feeling of being ignored (see Table 6).

Table 6: Q. 13a If participant was not satisfied with experience with the police complaint process, why not?

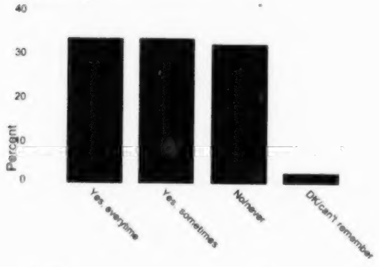
	No.	%
I was ignored/ laughed away	14	45
Complaint didn't go anywhere/did not hear back	10	32
Result was bias	1	3
Other/Miscellaneous	6	19
Total	**31**	**100**

1.2.5 LOW INCOME AND OUTCOME OF COMPLAINT

In order to assess the extent to which participants perceived their socio-economic status as a factor in their relationship to the police complaint process, the surveyors asked two questions using low income as a proxy for status. The first of these questions asked all participants whether they believed that low income affects the outcome of complaints in general. Nearly three-quarters (74%) of the sample (n=298) answered affirmatively (see Chart 16). The second question was asked only of those who had a complaint (n=85). In this case, a similar proportion (78%) believed their own low-income status had affected the outcome of their complaint (see Chart 17).

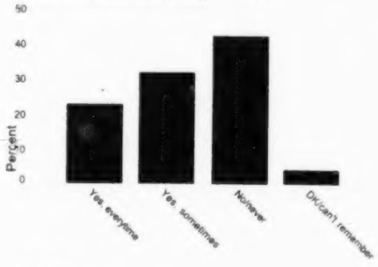
When the latter group of participants was asked to describe how they thought their low-income status affected the outcome of their complaint, the responses pointed to predominately police-related concerns (76%), involving the perception that police look down on street people and/or believe they have no rights. Not being able to hire a lawyer to pursue the complaints and not wanting to 'snitch' were some of the other responses given for this question (see Table 7).

Chart 14: Q. 12 Do you feel your complaint was taken seriously



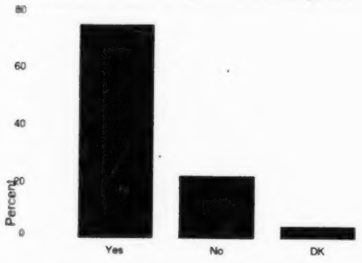
N=85

Chart 15: Q. 13 Were you satisfied with your experience with the police complaint process?



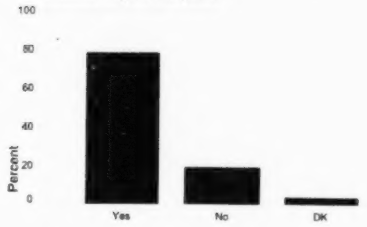
N=76

Chart 16: Q. 14 Do you think that being a person with low income affects the outcome of a complaint?



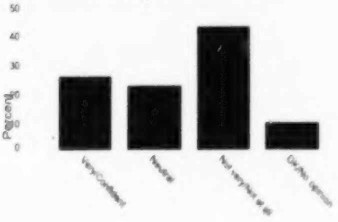
N=289

Chart 17: Q. 15 If you answered yes to Q. 7, do you think that being a person with low income affected the outcome of your complaint



N=85

Chart 18 Q. 16 What is your level of confidence in the overall process in British Columbia for handling complaints about police?



N=298

Table 7: Q. 15a In what way do you think that being a person of low income affected the outcome of your complaint?

	No.	%
Police look down on street people/ no rights	53	76
Can't afford to hire a lawyer/ pursue claim	4	81
Don't want to snitch	1	83
Other/Miscellaneous	12	17
Total	**70**	**100**

1.2.6 LEVEL OF CONFIDENCE IN POLICE COMPLAINT PROCESS IN BC

Given the findings above, it is not surprising that only 25% of participants had any confidence in the police complaint process, while 43% had little or no confidence in it. More than one fifth (22%) of the participants reported being neutral and another 9% reported not knowing or having no opinion (see Chart 18).

Table 8 shows that when the answers to this open-ended question were standardized and coded for database entry, the reasons that participants expressed for having little or no confidence in the process were generally related to perceptions of the police or experience(s) with the process. In the latter case, these were experiences of either the participants themselves or their friends. Interestingly, however, many of those participants who expressed confidence in the system also mentioned similar issues.

Table 8: Q. 17 Can you explain why you feel confident or not confident in the police complaint process?

	Not confident	%	Confident	%
Police look down on street people/no rights	46	37	1	1
Bias/ Police investigating police	42	33		
Personal Experience/experience of friends	19	15	15	20
Other/Miscellaneous	11	9	12	16
Don't know enough about it	4	3	4	6
DK	4	3	7	9
Confident in system	1	0	36	48
Total	**127**	**100**	**75**	**100**

2 VARIATION BY SITE, GENDER, ETHNOCULTURAL BACKGROUND AND DIRECT EXPERIENCE

This section presents cross-tabulated survey findings for those participants with direct experience of police conduct about which they were concerned. This data is cross-tabulated by study site, gender, and ethnocultural background. Only those findings that showed significance (p. > .05) or near significance (p.> .06-.08) are reported. See Appendix 2 for further information regarding the characteristics of the Street Sample.

2.1 SITE DIFFERENCES

2.1.1 PARTICIPANT CHARACTERISTICS

Table 9 shows a selection of survey participant characteristics categorized by study site. Men were the overwhelming number of participants, which is consistent with general observations of the street-involved population, but their proportion varied somewhat by site. More males were interviewed in Vancouver (77%) compared with the 70% in New Westminster and 69% in Victoria.

Table 9: Selected participant characteristics by site

	Male %	Female %	Aboriginal %	Unemployed %	Mainly/often homeless	Never homeless
Vancouver	77	25	29	87	37	25
Victoria	69	24	32	77	60	8
New Westminster	70	30	48	64	36	26

More aboriginal people were interviewed in New Westminster (40% as compared to 32% in Victoria and 29% in Vancouver). Non-white or non-Aboriginal survey participants were too small in number (10 participants or 3%) for any meaningful comparison.

More New Westminster participants were employed or in school as compared to the other sites, and more of the Vancouver participants were unemployed (88% in Vancouver as compared to 80% in Victoria and 64% in New Westminster).

More of the Victoria participants were 'mainly' or 'often' homeless (60% as compared to 38% in Vancouver and 25% in New Westminster) and fewer Victoria participants were 'never homeless' (8% compared to 26% in New Westminster, and 25% in Vancouver).

2.1.2 POLICE COMPLAINT COMMISSIONER

Only 39% of participants in Vancouver said they knew what to do in the event of having a complaint about their treatment by police, compared to 48% in New Westminster and 56% in Victoria (see Table 10). More Vancouver participants had *not* heard of the OPCC – 65% as compared to 58% in New Westminster, and 49% in Victoria.

Table 10: Participant knowledge of police complaint process, by site

	Participants					
	Know how to make a complaint about treatment received from a local police officer			Have heard of the Office of the Police Complaint Commissioner		
	Yes %	No %	Not Sure %	Yes %	No %	Not Sure %
Vancouver	39	52	8	34	65	
Victoria	56	31	13	40	49	11
New Westminster	48	52		42	58	

2.1.3 POLICE COMPLAINT PROCESS

Table 11 shows that more participants in New Westminster thought investigations into complaints against the police are handled fairly in their local police departments – 44% as compared to 24% in Vancouver and 20% in Victoria (n=298).

Table 11: Perceptions of the fairness of complaints, by site

	Complaints are handled fairly		
	Yes %	No %	DK %
Vancouver	24	60	15
Victoria	20	68	12
New Westminster	44	46	10

When asked why they did not believe complaints were handled fairly by their local department, 70% of participants in New Westminster and Vancouver attributed this feeling to their perceptions of the police – bias, protecting their own, ignoring complaints, etc. – or to their own or their friend's experiences (36% and 23%, respectively), compared to 60% and 13%, respectively, for participants in Victoria (see Table 12).

Table 12: Why participants do not believe police complaints are handled fairly, by site

	Police bias %	Personal/ friends' experiences %	Unknown process %	Police ignore complaints %	Other %	DK %
Vancouver (n=106)	49	23	1	20	6	2
Victoria (n=50)	42	36	4	18		
New Westminster (n=23)	70	13	4		9	4

More participants in Victoria said they had personally experienced actions or comments of a police officer in the past two years about which they had concerns – 60% as compared to 51% in Vancouver, and 40% in New Westminster. More participants in Vancouver and Victoria than in New Westminster had also *witnessed* actions or behaviours that concerned them – 63%, 66% and 46%, respectively (see Table 13).

Table 13: Participants with concerns about police conduct, by site

	Involving themselves %	They have witnessed %
Vancouver (n=173/171)	50.8	63.1
Victoria (n=75/73)	60	65.7
New Westminster (n=50)	40	46

Participants in Victoria were much more likely to raise their concerns 'every time or sometimes' as compared to those in Vancouver or New Westminster – 71% compared to 30% and 48%, respectively. Only 28% of Victoria participants 'never' raised their concerns compared to 70% in Vancouver and 52% in New Westminster (see Table 14). Reasons given for not raising concerns were more police-related in New Westminster and more process-related in Vancouver and Victoria.

Table 14: Did participants raise their concerns, by site

	Every time %	Sometimes %	Never %	DK %
Vancouver (n=124)	10	19	70	
Victoria (n=58)	22	48	28	2
New Westminster (27)	11	37	52	

Of those participants who did raise their concerns, a large proportion in each site raised them with the police (see Table 15). This figure is much higher in Victoria (76%) than in either New Westminster (62%) or Vancouver (54%). Participants in Victoria were also more likely than their counterparts in the other two cities to also raise their concerns with a community or advocacy group (78% compared to 41% in Vancouver and only 8% in New Westminster). Participants in Victoria were also more likely to take their concerns regarding police conduct to an MP, MLA, and/or City Councillor. In contrast, Vancouver and New Westminster participants who raised their concerns were more likely to do that with other people ranging from lawyers to a doctor, a welfare worker, local businesses, and friends. It is also evident that many, if not most, survey participants who raised concerns in Victoria raised those concerns with more than one party.

Table 15: Groups with which participants raised their concerns, by site

	Concerns raised with				
	Police Dept./ Officer %	OPCC %	MP/MLA/ City Councillor %	Community/ Advocacy Group %	Other %
Vancouver (n=37)	54		3	41	19
Victoria (=41)	76	2	34	78	
New Westminster (n=13)	62			8	31

Among the participants who did raise their concerns, those in Vancouver were less likely to report being informed of the steps available to address their complaints (see Table 16). Fifty one percent (51%) said they were never informed compared to 31% in New Westminster and only 12% in Victoria (n=88).

Table 16: Participants received the information they needed to address their complaints, by site

	Every time %	Sometimes %	Never %	DK %
Vancouver (n=35)	43	6	51	
Victoria (n=40)	33	50	13	5
New Westminster (13)	54	15	40	

The sites also showed important differences between participants' perceptions of the seriousness with which their complaints were treated (see Table 17). In Vancouver, 47% of those who answered the question did not believe they were taken seriously. This compares to 33% in New Westminster, and only 18% in Victoria. Conversely, the proportion of Vancouver participants who reported their complaints being treated seriously 'every time' was also 47%. Almost 80% of Victoria participants said their complaints were treated seriously at least 'sometimes' while half of those reporting in New Westminster said their complaints taken seriously 'every time'.

Table 17: Participants' perceptions of whether their complaints were treated seriously, by site

	Every time %	Sometimes %	Never %	DK %
Vancouver (n=34)	47	3	47	3
Victoria (n=29)	15	64	18	3
New Westminster (12)	50	17	33	

Similarly, more Victoria participants expressed satisfaction with their experience with the complaints process than did those in other sites (see Table 18). Nearly 66% of participants in Victoria were satisfied 'every time' or 'sometimes' compared to 50% in New Westminster, and only 34% in Vancouver.

Table 18: Participants' satisfaction with the police complaint process, by site

	Every time %	Sometimes %	Never %	DK %
Vancouver (n=26)	31	4	62	4
Victoria (n=40)	13	55	30	3
New Westminster (10)	40	10	40	10

Compared to the other two sites, more Victoria survey participants believed that their complaints are taken seriously and expressed satisfaction with their experience of the complaints process; however, Victoria participants are also much more likely to believe that low income status affects the outcome of a complaint about police conduct (see Table 19).

Table 19: Participants' perceptions of the influence of low income on the outcome of police complaints in general, by site

	Yes %	No %	DK %
Vancouver (n=169)	70	27	4
Victoria (n=50)	84	10	6
New Westminster (70)	74	22	4

Victoria participants were also much more likely to believe that being a person of low-income affected the outcome of their *own* complaint compared to those in Vancouver and New Westminster (see Table 20).

Table 20: Participants' perceptions of the influence of their low income status on the outcome of their own complaints, by site

	Yes %	No %	DK %
Vancouver (n=34)	68	24	9
Victoria (n=38)	92	8	
New Westminster (n=13)	62	39	

Finally, there were some site differences in participants' level of confidence with the overall process in BC for handling complaints against the police (see Table 21). More participants in New Westminster said they were 'very confident' or 'confident' (42%), than were those in Vancouver (23%) or Victoria (20%). Indeed, in Victoria, a majority were 'not very confident' or 'not confident at all' in the process.

Table 21: Confidence levels in the police complaint process, by site

	Confident/ Very confident %	Neutral %	Not very confident/ Not confident at all %	DK %
Vancouver (n=173)	23	22	44	11
Victoria (n=75)	20	16	53	11
New Westminster (50)	42	32	24	2

2.2 GENDER AND ETHNOCULTURAL BACKGROUND

The data show some ethnocultural and gender differences among participants; primarily involving housing and employment status (see Table 22). A slightly higher proportion of white males reported a disability than did the Aboriginal participants or those from other groups. Both groups of aboriginal participants and female participants were slightly younger – both around 37 years of age – than white males, with a mean of 40 years.

Table 22: Selected participant characteristics by gender and ethnocultural background

	Mainly/Often homeless %	Never homeless %	Unemployed %	Disability %	Mean Age
Male (n=220)	46	21	80	61	40
Female (n=73)	33	22	88	63	37
White (n=193)	44	21	82	63	41
Aboriginal (=95)	40	20	82	60	37

The proportion of males (41%) who had heard of the OPCC is much higher than that of females (26%). However, there were no statistically significant ethnocultural or gender differences with regard to knowledge of how to make a police complaint, knowledge of the role of the OPCC, opinions regarding the fairness of local police departments, nor experiences with police treatment (by number of incidents or number of incidents causing concern).

Ethnocultural or gender differences had no significance for concerns about police conduct, reasons for not reporting, filing formal complaints, and perceptions of whether the complaint was taken seriously. However, expressions of satisfaction were statistically relevant. Fewer Aboriginal than white participants were 'always satisfied' with the outcome of their complaints (11% compared to 32%) but more Aboriginal participants were 'sometimes' satisfied (41% compared to 23% of white participants; see Table 23).

Table 23: Satisfaction with outcomes of police complaints by ethnocultural background

	Every time %	Sometimes %	Never %	DK %
White(n=44)	32	23	41	5
Aboriginal (n=27)	11	41	48	

More females than males were *not* confident about the process in place to handle police complaints (49% as compared to 41% of males), but more males were neutral – 25% as compared to 16% for females (see Table 24).

Table 24: Confidence in the police complaint process, by gender

	Very confident/ Confident %	Neutral %	Not very/ Not at all confident %	DK %
Male (n=220)	26	25	41	8
Female (n=73)	26	16	49	8

2.3 DIRECT EXPERIENCE

Participants who were never homeless were less likely to have direct experience with treatment by police about which they were concerned compared to those in some state of homelessness (see Table 25). Only 33% of the 'never homeless' had direct experience as compared to 52% of the 'mainly' homeless, 60% of the 'often' homeless and 57% of the 'occasionally' homeless.

Table 25: Concern about police conduct by housing status

	Concerns about police conduct experience directly by participants	
	Yes %	No %
Mainly homeless (n=84)	52	48
Often homeless (n=43)	60	40
Occasionally homeless (n=108)	57	73
Never homeless (n=63)	33	67

Participants with direct experience were much less likely to believe that investigations into complaints against the police are handled fairly in their local police departments (see Table 26). Only 16% of this group said complaints were handled fairly compared to 38% of those without direct experience.

Table 26: Relationship between concern about police conduct and perception of the fairness of the complaint process

	Concerns about police conduct experienced directly by participants (n=153) %	
Complaints handled fairly	Yes %	No %
Yes	16	40
No	72	15
DK	12	14

There is also an important intersection between participants' direct experience with police conduct compared to witnessing police conduct about which they were concerned (see Table 1). Eighty percent (80%) of those who reported having concerns about police conduct directed toward or involving them also witnessed conduct about which they had concerns. These participants constitute nearly 67% of those who had witnessed police conduct about which they were concerned.

Those who had concern about their direct experience with the police were also more likely to believe that low-income status affects the outcome of a complaint compared to those without direct experience (Table 27). Eight-five percent (85%) of the former group of participants believed that low income status is relevant to the outcome of a complaint, compared to only 63% of those who had not experienced police conduct causing concern.

Table 27: Relationship between direct experience and the belief that low income affects the outcome of a complaint

		Low income affects the outcome of a complaint			
		Yes	**No**	**DK**	**Total**
Concerns about police conduct experienced directly by participants	Yes	125	19	3	148
	No	89	44	9	142
	Total	**214**	**63**	**12**	**289**

Those with direct experience were much less confident about the overall process for handling police complaints in BC than were those without such experience (Table 28). Only 19% of the former were 'very confident' or 'confident' with the process compared to 32% of the latter. Moreover, fewer of those participants with direct experience were neutral (17%), compared to those without such experience (28%).

Table 28: Level of confidence in the complaint process by experience with police conduct

		Very confident/ confident %	**Neutral %**	**Not very/Not at all confident %**	**DK %**
Concerns about police conduct experienced directly by participants	Yes (n=153)	19	17	55	9
	No (n=145)	32	28	30	10

3 FINDINGS FROM THE SOCIAL AGENCY SAMPLE

A total of 44 social agencies that provide services to marginalized people were sampled in the three study sites. In Vancouver, personnel from 21 agencies in the Downtown Eastside, the West End and Grandview/Woodlands were interviewed. All three of these neighbourhoods have active 'street scenes'. In New Westminster, personnel from nine agencies were interviewed. Personnel from 14 agencies were interviewed in Victoria. The list of agencies surveyed is included in Appendix 3.

The interview data were entered into an SPSS database. Because of the small number of agencies and the open-ended structure of some of the survey questions, values were recoded for certain variables (e.g., type of agency; services offered; referrals) before the frequencies were run. Although numbers are too small for any meaningful statistical analysis, cross tabulations were conducted by site to look at the frequencies and to see whether differences occurred. Guides for exploring site differences included actual and expected counts and chi-square tests.

Analysis of the interview data revealed the following about the agencies, the personnel interviewed and their experience and knowledge of the police complaint process and the OPCC.

3.1 AGENCY CHARACTERISTICS

3.1.1 Type of Agency

The agency personnel that were interviewed work in organizations that provide a wide range of services and programs:

- One half (50%) of the participating agencies provided shelter services;
- 42% provided counselling or referrals;
- Slightly over a third (34%) of agencies provided drop-in, emergency shelter or food services;
- 27% provided various aspects of health programs and services related to, for example, AIDS, mental illness, drug use;
- 16% comprised church-related multi-service (i.e., offering a range of different programs and services);
- 11% were community centers that provide a variety of services; and
- 7% focused on education and employment services;

- 5% each provided language and interpretation services, employment and recreation programs, and child care services.

Personnel at these agencies work with a broad range of people:

- 59% of the agencies served street-involved and homeless people;
- 14% served any community people;
- 7% worked with people with mental health problems;
- 7% worked with Aboriginal clients;
- 7% worked with sex trade workers;
- 5% served immigrants and refugees; and
- 2% provided programs for people with addictions.

3.1.2 CLIENTS SERVED

In terms of clients mainly served by the various agencies, 43% served adult males, 20% adult females; 18% all adults equally; 11% adults and youth and 7% all youth.

3.1.3 LEGAL SERVICE AND REFERRALS

Fifty-five percent (55%) of the agencies did not offer legal services to clients while 45% did.

Nearly two-thirds (64%) of agency personnel claimed that clients used their agency to report police-related problems.

When asked about to whom they would hypothetically refer clients in the case of a police complaint, agency participants gave three the common answers:

- to a legal advocate (legal aid, Native Courtworker) or lawyer (36%);
- to a community advocacy group (36%); or
- to a locally known and trusted police officer or community police office, or, more rarely, to a police department (20% inclusive).

In only 7% of cases did participants say they would refer another group and in only one instance did a participant cite the OPCC. Responses to this general question differ from the figures for actual referrals below.

3.2 AGENCY PERSONNEL INTERVIEWED

3.2.1 POSITIONS AND EXPERIENCE

Slightly over one-half of the agency participants were executive directors or program managers; 34% were front-line workers; and 14% identified themselves as social workers or counsellors.

The majority (57%) had been with their agency six years or more; 23% had worked three to five years and only one-fifth (20%) had been employed at their agency two years or less. This suggests that participants brought considerable experience and knowledge to the interviews.

3.2.2 FAMILIARITY WITH COMPLAINTS PROCESS

Despite their level of experience, 39% of participants were not familiar with the process available for members of the public to lay complaints against police. Of the 61% who were familiar with it:

- Barely one quarter (24%) understood the process 'very well' and
- 76 % only 'somewhat'.

Those who knew about the process found out:

- Through actual experience (57%);
- By word of mouth (27%); and
- Through the media (10%).

3.3 THE POLICE COMPLAINT PROCESS

3.3.1 COMPLAINTS AND TYPE OF REFERRAL

When asked if they had had clients report a complaint to them about treatment by local police, 91% of agency personnel said 'yes', but only 20% said it occurred 'often'; 48% said 'sometimes'; and 25% said 'rarely'.

In the case of these actual police complaints:

- 77% percent of participants had referred a complaint to a community advocate;
- 59% referred clients to a lawyer;
- 41% to police;
- 34% to an MP/MLA/City Councillor; and
- 11% to the OPCC.

3.3.2 SATISFACTION

Referrals to lawyers received the highest ratings of satisfaction from agency participants, at 57%; followed by referrals to police, at 55%. However, it is important to note in this context that many cases of reporting an incident or situation to police, especially in Vancouver and New Westminster, involved talking with an officer who is well known in the community or to a community policing office where a level of confidence had already been established. Forty seven percent (47%) of agency participants said they were satisfied with referrals to community advocates while 20% reported satisfaction with referrals to an MP/MLA/City Councillor. Two of the five referrals to the OPCC were considered satisfactory. Overall, only 23% of the agency participants reported feeling satisfied about all the referrals they had made over time, though 56% would refer future complaints to police and 36% would refer to the OPCC.

The primary reason for lack of satisfaction with referrals was that 'nothing happened' (64%). Other reasons included:

- 14% reported that police behaviour didn't change as a result,
- 13% said the process was too long and complicated, and
- 9% don't understand the system or reported being too passive in pursuing the complaint.

3.3.3 LEVEL OF CONFIDENCE IN PROCESS

The level of confidence in the police complaint process among agency participants is not very high:

- 23% of participants were 'very confident' or 'confident',
- 16% were 'neutral', and
- 50% were 'not very confident' or 'not confident at all',
- 2% said they 'didn't know'.

3.3.4 REPORTING BY MARGINALIZED PEOPLE

Not surprisingly, when asked whether they thought marginalized people are likely to make a complaint directly to police, 86% of they agency participants said 'no'; 9% weren't sure; and 4% said 'yes' and 'don't know' (2% each).

The over-riding basis for this belief was the relationship between police and street people: primarily the latter's fear of police or fear of retaliation by police or just a belief that the police will provide no support (75%). About 20% of agency participants also believed that marginalized people have "too much else going on in their lives" to deal with these issues and/or are passive because they are generally used to poor treatment.

3.3.5 ROLE OF THE AGENCY

Only a third of participants felt they had a greater role to play in dealing with complaints against police. Of those:

- 53% thought they needed to focus more on the issue to provide better service to clients,
- 33% felt more information regarding the complaints process was required for their workers and/or volunteers,
- 7% thought they should work to improve relationships with police, and
- 7% thought they should get involved in greater client outreach around the issue.

With regard to available information regarding the complaints process:

- 70% of agency participants admitted to not having sufficient information about the process,
- 95% said no pamphlets were presently available at their agencies, and
- 81% thought pamphlets would be useful.

3.4 SITE VARIATION

There were differences between agency responses in each site. It is important to remember that these findings may reflect differences in the agency services and resources across the three sites rather than pointing to any issues regarding the complaints process.

- Victoria had fewer executive directors or program participants (29% as compared to 70% in New Westminster and 60% in Vancouver) and fewer with long experience at the agencies.
- More clients in Victoria and New Westminster were referred to lawyers but this may be an artefact of having Pivot Legal Society in Vancouver, which, along with the Downtown Eastside Residents Association, was one of the two highest sites of referral in Vancouver.

- More New Westminster participants said they had not had clients report a concern or complaint about police – 30% as compared to 5% in Vancouver, and none in Victoria.
- When complaints occurred, more of the Vancouver and New Westminster participants said this occurred 'sometimes' (63% and 87%, respectively), whereas in Victoria the 'often' and 'rarely' responses were most frequent (each at 43%).
- More of the Victoria participants said they made referrals to an MP/MLA/City Counsellor but, of these, nearly two-thirds were considered unsatisfactory.
- Fewer New Westminster participants were satisfied with their community advocacy referrals – only 40% compared to 80% in Vancouver and 100% in Victoria.
- Ninety two percent (92%) of Victoria participants were satisfied with referrals made to lawyers as compared to only 40% in New Westminster, and 50% in Vancouver.
- Seventy five percent (75%) of referrals made to police in Victoria were considered satisfactory compared to only 37% in Vancouver and 25% in New Westminster – referrals in the latter two sites were much less frequent.
- Victoria participants reported more satisfaction with referrals to a community advocate – 92% were satisfied compared to 25% in New Westminster and 12% in Vancouver.
- When asked about making referrals in the future, more participants in New Westminster (63%) said they would report to the OPCC, whereas 71% in Victoria and 41% in Vancouver said they would not make such a referral.

4 DISCUSSION

The survey of street-involved individuals highlights six key issues with regard to the police complaint process for this population. First, based on the survey results, there is a widespread lack of understanding of both the process and knowledge of the role of the OPCC. This is particularly interesting given the second issue raised by the survey: the data show that a very large proportion of people who are involved in the street scene have had multiple concerns about police conduct over the past two years. While it is not the role of this research team to speculate about the reasons for such concerns, that fact that they exist indicates that there is a problem in the relationship between marginalized people and the police.

Third, the problematic nature of this relationship extends to perceptions of the police complaint process itself, notwithstanding the generally low levels of understanding of the process and the role of the OPCC. The people who were surveyed lacked confidence in the process, suggesting that it has minimal legitimacy among the marginalized, especially those who are directly affected by police conduct.

Fourth, the evidence shows that concerns resulting from direct experience with the police affect people's perceptions of fairness of the complaints process, as well as of the police themselves. Indeed, there was almost no belief among survey participants with direct experience that police would conduct a fair inquiry into police conduct. Given the lack of knowledge of the role of the OPCC, the relationship between the marginalized populations and the police seems to have a significant bearing on perceptions of the complaints process.

Fifth, given the vast over-representation of Aboriginal people in the sample - which likely accords with their representation in the street population - the low level of ethnocultural difference around concerns about police conduct as well as confidence and fairness in the complaints process suggests that socio-economic marginality, rather than ethnocultural background, is a determining factor in relations with the police and associated institutions.

Finally, the significant variations by study site in levels of satisfaction and perceptions of the police complaint process, as well as experiences with the police, bear further investigation. While the variations reported above were statistically significant, the small sample sizes in each locale would necessitate a more in-depth approach to understand the factors involved in such differences. For example, are these the result of different municipal police practices with regard to marginalized people or different approaches by agencies to the issue?

The survey results suggest that, at least with regard to the street population, the authorities responsible for the police complaint process at all levels need to engage in two central activities. First, the process needs to be reviewed to determine the validity of the current police complaint model.

Second, the OPCC needs to engage in outreach to marginalized groups in the population. While it would require more research to affirm, the distance of the process from 'the street' and the possible involvement of police forces are likely delegitimizing factors. An increased presence of the complaint process on 'the street' could only enhance its legitimacy. This can probably be effected through community organizations like the ones interviewed for the agency survey but may also require not only printed material but also educational workshops that would familiarize people with the process and give them an opportunity to critique it.

The survey of social agencies provided additional data, particularly with regard to the process of referral once a concern has been raised. One of the consistent responses from agency personnel was a differentiation of 'The Police' from a local officer or a community policing office with which the participants were familiar. This was particularly the case in Vancouver and New Westminster. The sense of familiarity was a key dimension of the decision to involve the police at all.

Some participants mentioned individual police officers by name and said that they would have no hesitation going directly to that person because of the positive relationship the officer had with the community and the agency. But without this sense of knowledge and familiarity, agency participants were very reluctant to go directly to the police. Agency participants expressed two reasons for such reluctance. First, like the street participants, agency participants had concerns about retaliation by police or damaging existing police/agency relations. One participant noted that, *"people [agency and clients] don't want to alienate the police by laying complaints … they need police because of the environment in which they live [in the Downtown Eastside]"*. Second, many participants did not feel that police could monitor or investigate themselves and that by going to police it was subscribing to that conflict-of-interest scenario. As one said: *"[You] don't usually turn [for help] to [the] person who has traumatized you"*, and another said, *"Police don't have to answer to anyone."*

There were a number of inconsistencies in other responses as mentioned above. For example, while people would often state that they did not feel their agency could or should play more of a role in the area of police complaints, at the same time they would admit to not knowing much about the process, not having adequate information to provide clients and would welcome the use of pamphlets if available.

APPENDIX 1: STUDY METHODOLOGY

The data in this study were generated through two survey questionnaires, one directed at marginalized people living on or close to the street, the other at staff of social service agencies that work with the former group. The two questionnaires were developed in a collaborative process between the Strathcona Research Group and key research staff in Police Services Division. In the design of the questionnaires it was critical that the variables and values reflected those of the larger public telephone survey[2] utilized by Police Services Division. At the same time, it was also considered important to include some questions that would elicit answers reflecting the unique experience of those involved in street activities and those who work with them in social service agencies. The two surveys thus vary somewhat from the telephone survey but follow the same direction and seek to elicit answers to the same general questions.

STREET SURVEY

Strathcona has research experience with marginalized people in the two Lower Mainland sites and the Victoria surveyor has conducted street research in that city. This experience provided the basis for identifying the areas where people who are socio-economically marginalized and street-involved were most likely to live or be accessible to surveyors.

In order to determine the sample size in each site, the researchers initially explored comparing the proportion of the population with incomes below Statistics Canada's Low-Income Cutoff (LICO) category for each of the three cities to determine. However, this meant that the samples in the two smaller cities would likely have been too small for meaningful analysis and comparison. In consultation with Police Services Division, the research team settled on an overall sample of 300 participants with local samples broken down as follows:

- 175 interviews in Vancouver;
- 75 in Victoria; and
- 50 in New Westminster.

One less than the target number was ultimately completed in Vancouver.

Interviews in Victoria were conducted throughout the downtown core, where visibly marginalized people are present in relatively large numbers. Many interviews were done in the proximity of agencies like Streetlink, Street Outreach Services, and the Open Door, as well as in popular public spaces like Centennial Square. Because the target population is located in a few different areas in the downtown core, the Victoria interviewer was able to move around frequently in order to avoid duplication. Victoria participants were all very helpful and very eager to be involved as they valued an outlet for sharing their experiences. In addition, the survey itself provided an opportunity for educating participant's who seemed to have little knowledge of the complaints process and were interesting in learning more about it.

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[2] As part of the overall police complaint review, Police Services Division contracted the implementation of a separate survey, conducted by telephone, whereby residents from the 11 municipalities policed by independent forces within BC were contacted regarding public awareness of the complaints process.

Interviews in Vancouver were conducted from Commercial Drive through the Downtown Eastside and into the West End/Granville Street. Because of the density of visibly marginalized people in the central Vancouver area, it was less necessary to concentrate on spaces around community agencies than it was in other parts of the sample. Once the study began, interviewers learned that it was necessary to frequently change locations because many participants were interested in both conveying their experiences and learning something about the complaints process.

Interviews in New Westminster were conducted throughout the downtown area, with an emphasis on the area around the Union Gospel Mission (at 668 Clarkson Street) and Saint Barnabas Anglican Church (at 1002 Fifth Avenue). The visibly marginalized population in the downtown core of New Westminster is less condensed than in the other study areas. As a result, obtaining the desired sample required more effort here than in the other study sites.

Surveyors with experience conducting quantitative and qualitative interviews in the street milieu were selected for each of the three sites. This included direct experience in all three of the survey sites and sub-locales. The training of the surveyors in administration of the street survey focused on developing a clear understanding of the questions and the scoring process and as well as building a common approach to the interviewing process. The questionnaire was pre-tested at the end of January and necessary changes were made. Formal field work commenced in the first week of February and was completed by the end of the month. One of surveyors, who has extensive experience using Statistical Package for the Social Sciences (SPSS), was retained to enter all the street survey data into the database. Data analysis involved frequencies, means, and cross-tabulations of the variables by site, race, gender and direct experience with concerns over treatment by police.

The survey interviews in both sites were conducted using a 'cold call' approach in which interviews took place with people who were generally strangers to the surveyors. Each participant was offered $5 for participating. When a potential participant who appeared to be marginalized was seen on the streets that person would be approached to ask about his or her interest in participating in the study. Initially, participants were often suspicious that the interviewers were agents of the police department, but once the nature of the impartial research was explained and the promises of anonymity and confidentiality, people generally felt comfortable with their participation in the data-collection process. Participants were then interviewed in a locale close to this initial encounter, with the interviewers taking measures to find a place that accommodated the need for privacy while balancing the comfort of the participant with the safety of the interviewer. Despite the efforts to design a short survey, interviews ranged from twenty to forty minutes in length.

It is important to note that the street survey does have some limitations due to the environment in which the data was collected. Because the surveyors were approaching people 'cold' - that is approaching people to whom they were complete strangers - they were able to establish only minimal, if any, rapport with the participant. As a result, the situation could be difficult and participants were not always responsive to all questions. As noted above, some participants were initially suspicious that the study was being conducted by the police. In situations like this, the imperative for the surveyor is to complete the survey to the greatest extent possible. However, it also means that some questions are not answered by all participants. As the charts show, some questions have a lower response rate than would be expected given the overall numbers. Once they realized that the study was not being carried out by the police, most participants were actually quite keen to participate and have their opinions noted.

SOCIAL AGENCY INTERVIEWS

Service provider participants were selected on the basis of geography and type of service in the three research sites. They were identified by people who worked with marginalized or street populations and/or in agencies such as the United Way of the Lower Mainland. Lists were compiled for each site with the names of Executive Directors, where available. Originally an agency sample of fifteen was proposed for each site. However, this was altered for Vancouver and New Westminster because of the disparities in overall population, the relative population of the socio-economically marginalized target group, and the number of agencies. Ultimately, twenty-one interviews were conducted in Vancouver, nine in New Westminster, and fourteen in Victoria.

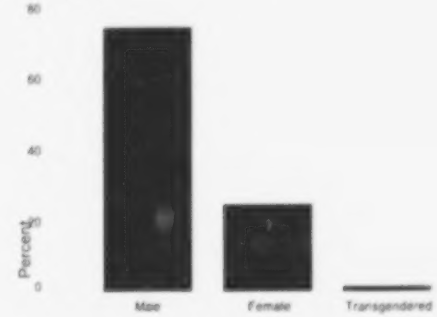
The Social Agency interview process involved a three-step process. A member of the research team contacted each agency and asked to speak to the Executive Director or another staff person with broad experience in the organization. After making this connection, the researcher described the purpose of the interview and then asked the contact to either participate, if he or she was the appropriate person, or to refer someone else who would be able to knowledgeably respond. The interviews were arranged and conducted by telephone during January and February and each took approximately fifteen minutes to complete.

APPENDIX 2: CHARACTERISTICS OF THE STREET SAMPLE

Gender: Males comprised 221 or 74%, females 73 or 24%. Trans-gendered people made up four or 1.3% of the street sample.

Respondent Characteristics:

Gender

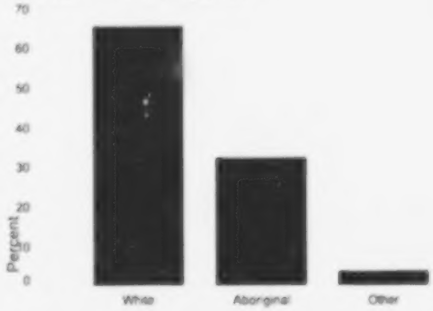


N=299

Ethnocultural Background: Nearly three-quarters or 194 or 65% of the street sample was white, 95 or 32% was Aboriginal, and 10 or 3% belonged to other minority groups.

Respondent Characteristics:

Ethnocultural Background

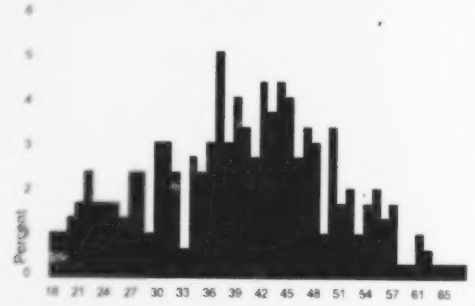


N=299

Age: The mean age of the street sample was 39.5 years – the New Westminster group was the oldest at 40.7 and the youngest groups was in Victoria at 37.7 years.

Respondent Characteristics:

Age

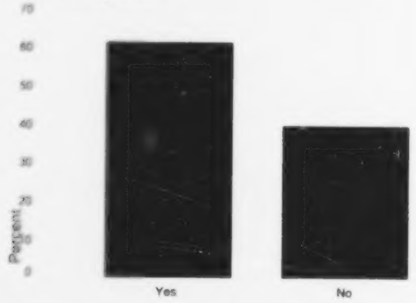


N=297

Disability Status: Over one-half of participants (53%) identified themselves as having a disability and, of those, 59% had a physical disability, 29% had a mental disability, and 11% had both a physical and a mental disability.

Respondent Characteristics:

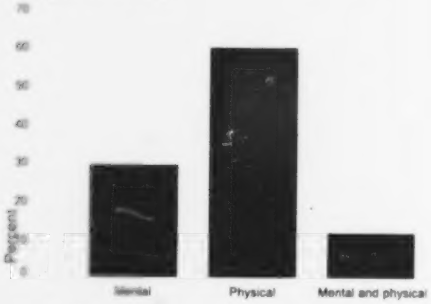
Disability Status



N=298

Respondent Characteristics:

Type of Disability

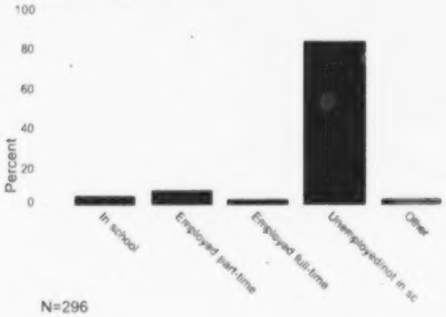


N=158

Employment Status: Only nine individuals or 3% of the sample was fully employed while 82% (n=243) was unemployed or not in school. Twenty-two people (7%) were employed part time, 13 (4%) were in school, and nine (3%) had another status such as on pensions or receiving disability payments.

Respondent Characteristics:

Employment Status

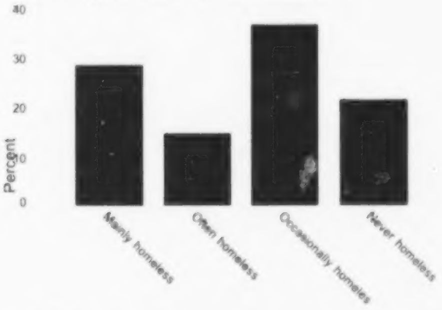


N=296

Homeless and Phone Status: When asked about their living circumstances over the past 24 months, 63 people or 21% were 'never homeless', 36% (108) were 'occasionally homeless', 43 or 14% were 'often homeless' and 84 or 28% were 'mainly homeless'.

Respondent Characteristics:

Housing Status over past 24 months

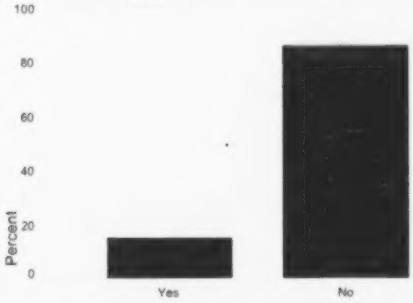


N=298

Information about a home telephone was collected for 293 of the participants and, of those, 85% had no telephone.

Respondent Characteristics:

Home Telephone



N=293

APPENDIX 3: LIST OF AGENCIES CONTACTED FOR THE STUDY

Vancouver	New Westminster	Victoria
• Carnegie Centre • Evelyn Seller Centre • Ray-Cam Co-operative Centre • The Living Room (Lookout Outreach) • The Dug-Out • DEYAS • VANDU • PACE • The Gathering Place • First Baptist Church • Three Bridges Clinic • Coast Foundation Drop-in • Healing Spirit • Portland Hotel • First United Church • Kettle Friendship Society • United Native Youth Association • MOSAIC • Hey Way N'oq • Bridge Emergency Shelter • The Door-is-Open Drop-In.	• Union Gospel Mission • Royal Columbian Hospital Admission Diversions Program • Fraserside Emergency Shelter • Salvation Army • Shilo-Sixth Ave. United Church • St. Barnabas Anglican Church • Cliff Block (Lookout Emergency Aid Society) • Garfield Hotel (Salvation Army) • New Westminster Community Development Society.	• Streetlink • 9/10 Club (St. Andrews Cathedral) • Victoria Native Friendship Centre • AIDS Vancouver Island • The Needle Exchange • The Open Door • Mustard Seed • Salvation Army • Alliance Club Outreach Services • TAPS • PEERS • Victoria Status of Women Action Group • YM-YWCA • Victoria Agency, Justice Institute of BC.

APPENDIX 4: STRATHCONA RESEARCH
POLICE COMPLAINTS PROCESS REVIEW
CORE AREA AWARENESS SURVEY

Site: ______________________ Interviewer ______________________

Date: ______________________ Interview No.: ______________________

OPENING SCRIPT:

Hi, I'm a researcher with Strathcona Research Group and I'm wondering if I can take a few minutes of your time. It will be worth $5. We're collecting some information for the provincial government on people's experience with the police and the police complaints process. Everything you tell me will be anonymous and confidential. This information is important because it will give the province some idea of issues that people on the street face with police. The interview will take about 20 minutes

DEMOGRAPHICS:

Gender: Male ☐ Female ☐ Transgendered ☐

Age: ________

Ethnocultural:

☐ White (e.g., French, German, Scottish, Irish)
☐ Aboriginal/First Nations/Indian/Metis
☐ Chinese
☐ South Asian (e.g., East Indian, Pakistani, Punjabi, Sri Lankan)
☐ Black (e.g., African, Haitian, Jamaican, Somali)
☐ Arab/West Asian (e.g., Armenian, Egyptian, Iranian, Lebanese, Moroccan)
☐ Filipino
☐ South East Asian (e.g., Cambodian, Indonesian, Laotian, Vietnamese)
☐ Latin American
☐ Japanese
☐ Korean
☐ Other, please specify ________________________

Do you have any disabilities?

Yes ☐ No ☐

Are you:

☐ In school
☐ Employed Part-time
☐ Employed Full-time
☐ Unemployed and not in school
☐ Other

Do you have a home telephone (i.e., not a cell phone)?

Yes ☐ No ☐

In the past 24 months have you been:

☐ Mainly homeless (16+ months)
☐ Often homeless (8 to 16 months)
☐ Occasionally homeless (<8 months)
☐ Never homeless

POLICE COMPLAINTS COMMISSIONER:

1. **If you had a complaint to make about treatment you received from a local police officer would you know what to do?**

   Yes ☐ No ☐ Not Sure ☐

2. **Have you ever heard of the Office of the Police Complaints Commissioner before?**

   Yes ☐ No ☐ Not Sure ☐

   a. *If yes,* How did you learn/hear about this?

   ____

   ____

   b. How well do you think you understand what the Office of the Police Complaints Commissioner is supposed to do?

   Very Well ☐ Somewhat ☐ Not At All ☐

POLICE COMPLAINTS PROCESS:

Description of the Police Complaints Process: If you have concerns about the actions or comments of a local police officer, you can either complain to the local police department, or to the Office of the Police Complaints Commissioner. Staff at either location should help you understand the complaints process and your rights, and assist you in making sure you have all the information you would need to file a complaint. In most cases, the police do the actual investigation, but the Office of the Police Complaints Commissioner's job is to make sure that complaints are handled fairly.

3. **In your local police department, do you believe investigations into complaints against the police are handled fairly?**

   Yes ☐ No ☐ DK ☐

   a. *If no,*Why not?

   ____

   ____

Now I'd like to ask you some questions about the past two years

4. **In the past two years, have you had concerns about any actions or comments of a police officer that were directed towards you or that involved you?**

   Yes ☐ No ☐

   DK ☐

5. **In the past two years, have you had concerns about any actions or comments of a police officer that you witnessed, but were not involved in?**

   Yes ☐ No ☐

   DK ☐

IF NO TO BOTH PROCEED TO Q. 14

6. How many times have you had concerns?

Once ☐ → **proceed to Q. 7 but answer only YES, NO, or DK**

Twice ☐

Three or more times ☐

7. Did you raise these concerns with anyone:

Yes (everytime) ☐ → **skip to Q. 9**

Yes, but only sometimes ☐ → **proceed to Q. 8**

No (Never) ☐ → **proceed to Q. 8, then skip to Q. 14**

DK/Can't remember ☐ → **skip to Q. 14**

8. Which of the following statements best describe the main reason(s) why you did not raise your concerns or complaint? (if multiple, score first three identified by participant)

☐ Incident not important enough

☐ Didn't know who to talk to

☐ Language issues

☐ The process was too confusing

☐ Dealt with it another way

☐ It's not part of my culture

☐ No one could/would do anything about it

☐ It's my word against a police officer's

☐ Fear of retaliation from the police

☐ I already did my part (i.e., gave verbal complaint)

☐ I have complained before, and it didn't do any good

☐ Other, please specify ______________________________

9. To which of the following groups or individuals did you raise your concerns? (can score more than one value)

☐ Police Department/ A police officer

☐ The Office of the Police Complaints Commissioner

☐ MP/MLA/ City Councillor

☐ Community Organization or Advocacy Group

☐ Other, please specify ______________________________

☐ Can't remember

10. Did the person or organization you raised your complaint with inform you of the steps you could take to address your complaint?

☐ Yes/every time

☐ Yes, but only sometimes

☐ No/Never

☐ DK/Can't remember

11. Did you file a *formal* *written* *complaint* with the police department or the Office of the Police Complaints Commissioner?

- ☐ Yes/every time
- ☐ Yes, but only sometimes
- ☐ No/Never
- ☐ DK/Can't remember

a. *If yes,* Did the police department or Office of the Police Complaints Commissioner follow up or respond to your complaint(s)?

- ☐ Yes/every time
- ☐ Yes, but only sometimes
- ☐ No/Never
- ☐ DK/Can't remember

b. *If Never or Sometimes,* what is the main reason(s) you did not raise your concerns/ file a formal written complaint in this instance? (if multiple, score first three identified by participant)

- ☐ Incident not important enough
- ☐ Didn't know who to talk to
- ☐ Language issues
- ☐ The process was too confusing
- ☐ Dealt with it another way
- ☐ It's not part of my culture
- ☐ No one could/would do anything about it
- ☐ It's my word against a police officers
- ☐ Fear of retaliation from the police
- ☐ I already did my part (i.e., gave verbal complaint)
- ☐ I have complained before, and it didn't do any good
- ☐ Other, please specify ______________________________

12. Do you feel that your complaint was taken seriously?

- ☐ Yes/every time
- ☐ Yes, but only sometimes
- ☐ No/Never
- ☐ DK/Can't remember

13. Were you satisfied with your experience with the police complaint process?

- ☐ Yes/every time
- ☐ Yes, but only sometimes
- ☐ No/Never
- ☐ DK/Can't remember

a. If no, why not? ______________________________

____

14. Do you think that being a person with low income affects the outcome of a compliant?

- ☐ Yes
- ☐ No
- ☐ DK

15. If you answered yes to Q. 7, do you think that being a person with low income affected the outcome of your complaint?

- ☐ Yes
- ☐ No
- ☐ DK

a. If yes, in what way?

____

____

16. What is your level of confidence in the overall process in British Columbia for handling complaints about police?

- ☐ Very confident
- ☐ Confident
- ☐ Neutral
- ☐ Not very confident
- ☐ Not confident at all
- ☐ DK/no opinion

17. Can you explain why?

____

____

END OF INTERVIEW

APPENDIX 5: STRATHCONA RESEARCH POLICE COMPLAINTS PROCESS REVIEW AGENCY QUESTIONNAIRE

1. **Site:** ____________________

2. **Type of Agency/Agency name:** ____________________

3. **Position of Participant in Agency:** ____________________

4. **Length of Time at Agency:** ____________________

OPENING SCRIPT:

General:

5. **What population(s) or group(s) in the city does your agency serve?**

6. **Are your clients mainly adults/ youth? Male? Female?**

7. Briefly, what are the main services you offer?

7 (a): Do you offer any legal or advocacy services?

8. In your opinion, do the people you serve use your agency to report police-related problems?

POLICE COMPLAINTS PROCESS:

9. Are you familiar with the process available for members of the public to lay complaints against police?

a. Yes ☐ No ☐

b. How well do you understand the process?

☐ Very Well
☐ Somewhat
☐ Not At All

10. How did you find out about the process?

11. If someone comes to you with a police-related problem, who would you refer them to?

CLIENTS COMPLAINTS/REFERRALS:

12. Have you had clients come to you with a complaint about their treatment by the local police? If yes, does this occur:

- ☐ Often
- ☐ Sometimes
- ☐ Rarely

13. Have you ever referred a client to the any of the following with regard to a complaint against the police?

	Referral			Satisfied	
	Yes	**No**	**DK**	**Yes**	**No**
Police Department					
Office of the Police Complaints Commissioner					
MP / MLA / City Counsellor					
Community Organization or Advocacy Group					
Lawyer					
Other, please specify ______					
Have never referred a client to any of the above		------	------		

a) If not satisfied with referral to any of the above, can you explain why not?

b) Would you refer clients to Police Department again?

Yes ☐ No ☐

c) Would you refer clients to the Office of the Police Complaints Commissioner again?

Yes ☐ No ☐

d) *If never referred a client,* If you have received a complaint from a client but did not make a referral, why not?

14. What is your level of confidence about the *overall* **process for handling complaints about police?**

☐ Very confident
☐ Confident
☐ Neutral
☐ Not very confident
☐ Not confident at all
☐ DK/no opinion

15. Do you think street/homeless/marginalized people are likely to make a complaint directly to police? If no why not?

17. Do you have any pamphlets in your agency that provide information on the Office of the PCC? Would these be useful?

18. Do you think your agency has a greater role to play in this area? If so what more should it be doing?

18. Do you feel that your agency has sufficient information to provide for your clients in relation to the Police Complaints Process?

Yes ☐ No ☐

APPENDIX G

REVIEW PARTICIPANTS

SUBMITTED BY:

Police Services Division
January 2007

TABLE OF CONTENTS

1 LIST OF INTERVIEWED PARTICIPANTS........4
- 1.1 Special Committee To Review The Police Complaint Process........4
- 1.2 Chief Constables........4
- 1.3 Victoria OPCC........4
- 1.4 Vancouver OPCC........4
- 1.5 Police Board Representatives and BCAPB Executive Committee President........5
- 1.6 BC Federation Of Police Officers and Vancouver Police Union........5
- 1.7 Discipline Authorities (In Addition To Chief Constables)........5
- 1.8 Internal Investigators........5
- 1.9 Former Internal Investigators........6
- 1.10 Special Interest Groups........6
- 1.11 Lawyers........7
- 1.12 Justice Institute of British Columbia........7
- 1.13 Other........7
- 1.14 Respondents........7
- 1.15 Complainants........7

2 INTERVIEW SELECTION METHODOLOGY........8

1 LIST OF INTERVIEWED PARTICIPANTS

1.1 SPECIAL COMMITTEE TO REVIEW THE POLICE COMPLAINT PROCESS

- Hon. Wally Oppal;
- Insp. John Dehaas, Vancouver Police Department;
- Insp. Sheila Sullivan, Vancouver Police Department; and
- John Nuraney, MLA.

1.2 CHIEF CONSTABLES

- Chief Ian Mackenzie, Abbotsford Police Department;
- Chief Paul Hames, Central Saanich Police Service;
- Chief Jim Cessford, Delta Police Department;
- Chief Dan Maluta, Nelson City Police Department;
- Chief Lorne Zapotichny, New Westminster Police Service;
- Chief Ben Andersen, Oak Bay Police Department;
- Chief Paul Shrive, Port Moody Police Department;
- Chief Derek Egan, Saanich Police Department;
- Chief Jamie Graham, Vancouver Police Department;
- Chief Paul Battershill, Victoria Police Department; and
- Chief Scott Armstrong, West Vancouver Police Department.

1.3 VICTORIA OPCC

- Police Complaint Commissioner Dirk Ryneveld;
- Deputy Commissioner Bruce Brown; and
- Cynthia Dyck, Investigative Analyst.

1.4 VANCOUVER OPCC

- Bill MacDonald, Senior Investigative Analyst; and
- Tom Steenvoorden, Investigative Analyst.

1.5 POLICE BOARD REPRESENTATIVES AND BCAPB EXECUTIVE COMMITTEE PRESIDENT

- Ted Price, Abbotsford Police Board;
- Gordon Irving, Central Saanich Police Board;
- Mayor Lois Jackson, Delta Police Board;
- Don Barcham, Nelson Police Board;
- Dwight Ross, New Westminster Police Board;
- Jo-anne Kern, Oak Bay Police Board;
- Dan Brown, Port Moody Police Board;
- Tarry Grieve, Port Moody Police Board;
- Mayor Frank Leonard, Saanich Police Board;
- Shona McGlashan, Vancouver Police Board;
- Ken MacLeod, Victoria Police Board;
- Ardath Hoole, West Vancouver Police Board; and
- Peter Webster, BCAPB Executive Committee President.

1.6 BC FEDERATION OF POLICE OFFICERS AND VANCOUVER POLICE UNION

- Cst. Dillon Sahota, Central Saanich Police Association;
- Cst. Heath Newton, Delta Police Association;
- Sgt. Pat Severyn, Nelson Police Association;
- Cst. Todd Sweet, New Westminster Police Association;
- Cst. Ryan West, Port Moody Police Association;
- Sgt. Steve Irwin, Saanich Police Association;
- Cst. Will Dodds, Saanich Police Association;
- Cst. Tom Stamatakis, Vancouver Police Union;
- Sgt. Steve Ing, Victoria Police Association;
- Det. Ed Pearce, West Vancouver Police Association; and
- Don Bland, Consultant, BC Federation of Police Officers.

1.7 DISCIPLINE AUTHORITIES (IN ADDITION TO CHIEF CONSTABLES)

- D/C/C Clayton Pecknold, Central Saanich Police Service;[1]
- D/C/C Mike Judd, New Westminster Police Service;
- Insp. Sherry Dwyer, Saanich Police Department;[2]
- D/C/C Bob Rich, Vancouver Police Department; and
- Insp. Rollie Woods, Vancouver Police Department.

1.8 INTERNAL INVESTIGATORS

- Sgt. Mike Stach, Abbotsford Police Department;
- A/S/Sgt. Ian MacWilliams, Delta Police Department;

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[1] Also interviewed as an Internal Investigator.

[2] Ibid.

- Sgt. Howie Grant, Nelson Police Department;
- Sgt. Denny Crosato, New Westminster Police Service;
- Sgt. Lori Jackson, New Westminster Police Service;
- Sgt. Dave Wynes, Port Moody Police Department;
- Sgt. Ross Poulton, Saanich Police Department;
- Sgt. Teresa Buckoll, Vancouver Police Department;
- A/Insp. Bob Cooper, Vancouver Police Department;
- Sgt. Ken Eng, Vancouver Police Department;
- Sgt. Malcolm Evanson, Vancouver Police Department;
- Sgt. Steve Hyde, Vancouver Police Department;
- Sgt. Ross Jackson, Vancouver Police Department;
- Sgt. Mike Purdy, Vancouver Police Department;
- Insp. Ian Upton, Vancouver Police Department;
- Sgt. Tom Sawyer, Victoria Police Department;
- Sgt. Todd Wellman, Victoria Police Department;
- Sgt. Rhys Wickes, Victoria Police Department; and
- Staff Sgt. Doug Bruce, West Vancouver Police Department.

1.9 FORMER INTERNAL INVESTIGATORS

- Insp. Scott Green, Saanich Police Department;
- Insp. Bob Downie, Saanich Police Department;
- Sgt. Dan Bezanson, Vancouver Police Department;
- Sgt. Mario Giardini, Vancouver Police Department;
- Sgt. John Grywinski, Vancouver Police Department;
- Insp. Warren Lemcke, Vancouver Police Department;
- Insp. Rick McKenna, Vancouver Police Department;
- Sgt. Kim Serheniuk, Vancouver Police Department;
- Sgt. Ray Tetzel, Vancouver Police Department;
- Sgt. Loris Zuccato, Vancouver Police Department; and
- Insp. Tony Zanatta, Vancouver Police Department.

1.10 SPECIAL INTEREST GROUPS

- Jason Gratl, BC Civil Liberties Association;
- Larry Cohen, BC Civil Liberties Association;
- Murray Mollard, BC Civil Liberties Association;
- Shirley Heafey, BC Civil Liberties Association;
- David Eby, Pivot Legal Society; and
- John Richardson, Pivot Legal Society.

1.11 LAWYERS

- Bill Smart, Smart & Williams;
- Cameron Ward, Cameron Ward & Company;
- David Butcher, Wilson Buck Butcher Sears;
- David Crossin, Crossin Coristine Woodall;
- Frank Falzon, Barrister & Solicitor (for OPCC);
- Kevin Woodall, Crossin Coristine Woodall; and
- Richard Peck, Peck & Company.

1.12 JUSTICE INSTITUTE OF BRITISH COLUMBIA

- A/Director Mike Trump.

1.13 OTHER

- Chief Judge Hugh Stansfield:
- Associate Chief Justice Dohm;
- Don Morrison, Former Police Complaint Commissioner;
- Frank D'Argis, Ministry of Attorney General, ITSD;
- Chee Yow, Ministry of Attorney General, ITSD;
- Sally Horton, Systemtek Consulting; and
- Alex Armstrong, Lexicon Projects.

1.14 RESPONDENTS

- 19

1.15 COMPLAINANTS

- 29

2 INTERVIEW SELECTION METHODOLOGY

As part of the review of the police complaints process, Police Services Division conducted 141 interviews/ focus groups with 148 key stakeholders.

The interviews were administered from February 20, 2006 to October 19, 2006 by the Police Complaints Review Team and Josiah Wood in a face-to-face semi-structured format. Sampling methods varied between respondent groups.

A census was conducted of the following groups:

- Professional staff of the **Office of the Police Complaint Commissioner;**
- **Chief Constables**;
- **Discipline Authorities** (where other than the Chief Constable);
- Police officers assigned to the **internal investigations function**;
- Representatives of the **BC Federation of Police Officers** and the **Vancouver Police Union**; and
- **Police Board** representatives (one selected per Board).
- Requests for volunteer participation were sent to:
- **Respondent officers** drawn from the file sample; and
- **Complainants** drawn from the file sample.

Representatives from the following groups were selected purposively:

- Representatives of **special interest groups**, such as the British Columbia Civil Liberties Association and Pivot Legal Society;
- **Lawyers** affiliated with the police complaints process;
- Representatives of the 2001 **Special Committee to Review the Police Complaint Process**;
- **BCAPB** Executive Committee President; and
- The **Justice Institute of British Columbia**.

Please see Table 1 for detail.

Total number of Interviews: 141

Total number of Participants: 148

Table 1: Interviews

Interviewed Respondent Groups	# Participants
OPCC	6
Chief Constables	11
DA	5
Internal Investigators	30
BC Federation of Police Officers and Vancouver Police Union	11
Police Board Representatives and Executive Committee President	13
Respondent	19
Complainant	29
Special Interest Groups	6
Lawyers	7
Special Committee	4
Justice Institute of British Columbia	1
OTHER	6
TOTAL # OF PARTICIPANTS:	**148**

APPENDIX H

REVIEW PLAN FOR THE REVIEW OF THE POLICE COMPLAINT PROCESS IN BRITISH COLUMBIA

SUBMITTED BY:

Police Services Division
September 2005

TABLE OF CONTENTS

1 INTRODUCTION 4

2 SCOPE 5

3 METHODOLOGY 9
  3.1 Analysis of Key Documents and Literature Review 9
  3.2 Surveys 10
  3.3 Review of Complaint Files and Related Documentation 10
  3.4 Interviews 12
  3.5 Other approaches 13

4 DATA REQUIRED 14

5 THE REVIEW TEAM 15

6 TIMELINE 16

7 FINAL REPORT 17

1 INTRODUCTION

Police Services Division has been consulting with stakeholders for some time about conducting an audit of the police complaint process, particularly with respect to the conduct of internal investigations by municipal police departments. On June 2, 2005, Police Complaint Commissioner Dirk Ryneveld released his final report regarding a series of more than 50 complaints involving members of the Vancouver Police Department (VPD). The content of this report provided additional impetus for a review of the complaint process.

The Minister of Public Safety and Solicitor General has instructed the Director of Police Services to conduct a review of the police complaint process, under the authority of s. 42.1 of the *Police Act*.

The review will examine three key aspects of the existing police complaint process:

1. The adequacy of the existing complaint process, including implications for amending the current legal framework (Part 9 of the *Police Act*)[1];
2. The conduct of police complaint investigations by independent municipal police departments; and
3. Confidence in and satisfaction with the existing process.

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[1] As required by section 52.1 of the *Police Act*, a Special Committee of the Legislature was established in 2001 to review Part 9 of the *Act* and the work of the Police Complaint Commissioner. The Committee's final report included 42 recommendations, 20 of which required amendments to Part 9 of the *Act*. The recommendations were aimed at improving the process, without diminishing any of its existing strengths. Police Services Division undertook stakeholder consultation and analysis of the recommendations prior to initiating the legislative reform process.

Due to a number of competing priorities, amendments to the *Police Act* (including Part 9) have not since reached the provincial government's legislative agenda. However, amendments to the *Police Act* are tentatively set for the 2006 agenda.

As noted in Police Complaint Commissioner Dirk Ryneveld's *White Paper* on *Police Act* reform, this provides an opportunity to "further update, refine and augment the Special Committee's recommendations…based on the ensuing 2 ½ years of experience" (p. 2).

2 SCOPE

Each of the 11 independent municipal police departments will be included in the review:

- Abbotsford Police Department;
- Central Saanich Police Department;
- Delta Police Department;
- Nelson Police Department;
- New Westminster Police Service;
- Oak Bay Police Department;
- Port Moody Police Department;
- Saanich Police Department;
- Vancouver Police Department;
- Victoria Police Department; and
- West Vancouver Police Department.

Designated policing units and special provincial constables will not be included in the review.

Complaints involving the Vancouver Police Department (VPD) will represent a major focus of this review in light of the number of complaints against the VPD and the findings of the Police Complaint Commissioner's report. Given the size of the population living and working within its jurisdiction, the VPD has a considerably higher number of contacts with the public than other independent municipal police departments in the province. Consequently, it is also the subject of a larger number of complaints against police. Statistics from the Office of the Police Complaint Commissioner (OPCC) indicate that, on average, complaints against the VPD have represented 48% of all complaints filed with the OPCC between 1998 and 2003.[2]

In an effort to maximize the resources invested in conducting the review, and ensure the review is provincial in scope, the methodology will include all independent municipal police departments. A provincial review will permit an assessment of the concerns highlighted by Police Complaint Commissioner Ryneveld with respect to the Vancouver Police Department, as well as allow the review team to identify best practices.

It is no part of the review process to engage in a re-investigation of any files. The sole object of this review is to identify, with the assistance of the principal participants in the process, where the process can be improved

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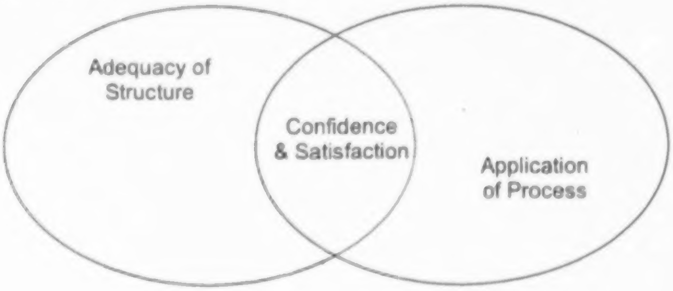
[2] Police Complaint Commissioner British Columbia 2003 Annual Report, p. 40.

so that recommendations for legislative changes can be made and implemented. The overall objective is to ensure that the complaint process is fair, balanced and effective.

Core Research Questions

As depicted in Figure 1, the review will examine three key aspects of the police complaint process: the adequacy of the process itself (i.e., the structure), the conduct of police complaint investigations by independent municipal police departments (i.e., its application) and the level of confidence and satisfaction with the process amongst those it serves.

Figure 1 Core Research Questions



The research questions to address these issues are listed below:

1. **Is the current police complaints process adequate to ensure that all public trust, internal discipline and service or policy complaints are investigated and where substantiated, resolved appropriately?**
    a. Does the process strike a fair balance between the needs and expectations of the public and the police?
    b. Does the legislation confer a sufficient level of authority on those responsible for investigating complaints?
    c. Does the legislation confer a sufficient level of authority on the Police Complaint Commissioner to ensure effective civilian oversight of the police complaint process?
    d. Are there gaps in the legislation (i.e., issues that are not addressed or not adequately addressed?
    e. What are the priorities for amending the process / what changes are needed?
2. **Does the conduct of complaint investigations by independent municipal police departments conform to the requirements of the existing process?**
    a. Are the requirements of the legislation being followed by municipal police departments? Without limiting the generality of the foregoing:
        i. Are complainants provided with the information and assistance they request in filing a complaint?
        ii. Is the OPCC notified of all complaints as required?
        iii. Is the OPCC notified of key decisions and events as required (e.g., classification of complaints, withdrawal of complaints, summary dismissal of complaints, decisions whether informal resolution is appropriate, etc.)?
        iv. Is the OPCC provided access to records respecting a complaint when requested?

        v. Do departments comply with orders of the OPCC (e.g., re-classification of complaints, order to investigate complaints withdrawn under duress or summarily dismissed, etc.)?
        vi. Are prescribed timelines followed?
        vii. Is consent obtained from complainants and witnesses prior to pursuing informal resolution?
        viii. Are complainants and respondents kept informed of the status of complaints as required?
        ix. Are complaints properly documented and are records retained as required?
    b. Are police officers (all levels) aware of their responsibilities with respect to the complaint process?
    c. How are complaints handled by municipal police departments?[1] Without limiting the generality of the foregoing:
        i. What efforts are made to gather necessary evidence to complete investigations?
        ii. What actions are taken by management to facilitate the complaint process?
        iii. Are the decisions made with respect to complaints appropriate based on the evidence in the complaint files, including:
            - complaint classification (e.g., public trust, internal discipline or service or policy);
            - disposition (e.g., summarily dismissed, informally resolved, unsubstantiated, substantiated); and
            - disciplinary action taken
        iv. Is the adjudicated discipline imposed?
        v. Are complaints finalized within a reasonable time period?
    e. Is there consistency across municipal police departments in the application of the complaint process? Without limiting the generality of the foregoing:
        i. Are the departments comparable in their use of informal resolution?
        ii. Are similar findings reached in comparable cases?
        iii. Are the departmental policies and procedures respecting the complaint process consistent across municipal police departments?
        iv. Are the departments in compliance with the *Provincial Standards for Municipal Police in British Columbia?*
    f. Are guidelines, policies and practice directives issued by the OPCC being followed?

3. Is there confidence in and satisfaction with the current process?

    a. Do complainants, the policing community, interest groups and the public have confidence in the process? Without limiting the generality of the foregoing:
        i. Is there adequate access to the process (e.g., ease of access to information about the process, or to file a complaint)?
        ii. Is information about the process understandable, relevant and consistent? Is information available in an appropriate range of languages?
        iii. Are there barriers to the process?
        iv. Is the process perceived as fair and unbiased?

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[1] This portion of the review will be led by Staff Sergeant Deborah Chisholm, a provincial police officer with extensive background in internal investigations and a Crown prosecutor (TBD). In collaboration with other members of the review team, they will develop measures to guide the interpretation of findings and enhance reliability.

b. Are complainants, respondent officers and witness officers satisfied with their experience with the process, in terms of:

    i. The fairness and balance of the process;
    ii. Access (e.g., ease of access to information about the process, or to file a complaint);
    iii. Communications (e.g., information about the process was understandable, relevant and consistent);
    iv. Responsiveness (e.g., timeliness of contacts and resolution, and quality of treatment received);
    v. Reliability (e.g., the process was consistent with the expected process and free of errors); and
    vi. Overall satisfaction?

3 METHODOLOGY

Four main procedures will be used to collect the information required to address the core research questions:

- Analysis of Key Documents and Literature Review;
- Surveys;
- Review of Complaint Files and Related Documentation; and
- Interviews.

3.1 ANALYSIS OF KEY DOCUMENTS AND LITERATURE REVIEW

A major objective of the review is to examine the adequacy of the existing process and legal framework. The existing provincial legislation (i.e., Part 9 of the *Police Act)* and other relevant reports and publications examining the complaint process in British Columbia will be analyzed, including but not limited to:

- *Closing the Gap: Policing and the Community Commission of Inquiry into Policing in British Columbia*;
- The report of the Special Committee to Review the Police Complaint Process;
- The *Police Act Reform White Paper & Draft Police Complaint Act* prepared by the Police Complaint Commissioner;
- The Police Complaint Commissioner's final report into the Pivot Complaints Against Vancouver Police Department; and
- Relevant case law.

Municipal police department policies and procedures regarding police complaints and internal discipline will be examined to assess consistency across the province and to determine compliance with Part 9 of the *Police Act* and the *Provincial Standards for Municipal Police in British Columbia*.

A literature review will also be conducted examining police complaint systems and experiences in other jurisdictions throughout Canada and internationally, with a focus on critical issues and best practices. This component of the review will assist the review team in reaching conclusions regarding the adequacy of the existing process and identify opportunities for improvement—including the implications in terms of amending the current legal framework.

This portion of the review will be undertaken by the chair of the review team.

3.2 SURVEYS

Surveys will be distributed to two key respondent groups:

- All sworn members of independent municipal police departments in B.C.; and
- A sample of residents in communities policed by independent municipal departments.

Police officer surveys will focus on police understanding of their roles and responsibilities with respect to the complaint process (e.g., duty to account), as well as their perceptions of the process (e.g., in terms of access, communications, fairness and priorities for change). Surveys will be distributed via email by BC Stats.

Public surveys will assess public perceptions of the complaint process with respect to: access, communications, fairness, overall satisfaction and priorities for improvements. The surveys will be administered by telephone by BC Stats, to a random sample of residents in communities policed by independent municipal departments.

To ensure that data collection also captures the views of marginalized populations, the review team will request assistance from service providers to administer the survey in the Downtown Eastside of Vancouver and other geographic areas identified by the review team.

Survey questions and sampling methods will be determined by the review team in consultation with BC Stats, taking into consideration the time and resources available for this stage of the review process.

In addition to addressing core research questions, responses to the survey questions will assist in identifying issues for further exploration through the in-depth interview process.

3.3 REVIEW OF COMPLAINT FILES AND RELATED DOCUMENTATION

Two samples of files will be reviewed: one of complaints processed under Part 9 and one of "non-lodged" complaints—complaints resolved informally without filing an official record of complaint under Part 9.

The main objectives in reviewing complaints processed under Part 9 will be to assess compliance with the legislation and the guidelines, policies and practice directives of the OPCC; and to determine the completeness of investigations.[4]

The primary consideration in reviewing non-lodged complaints will be to assess whether complaints are processed outside of the Part 9 process in suitable circumstances and in an appropriate manner.

Both file samples will also be used to identify complainants, respondents and witnesses who may be included in the interview process.

Complaints processed under Part 9

The OPCC and each of the independent municipal police departments will be asked to provide a list of complaints processed under Part 9 which were closed[5] between June 15, 2003 and June 14, 2005[6], including:

- The file number;
- The department involved;
- The date the complaint was filed;

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[4] As previously stated, this will not include a re-investigation of any complaints.

[5] To ensure that the file review process does not compromise ongoing complaint investigations, only closed files will be eligible for inclusion in the sample of files which will be reviewed.

[6] This time frame represents the two-year period preceding the Solicitor General's announcement of the review on June 14, 2005.

- The type of complaint (e.g., public trust, internal discipline, service or policy or hybrid complaint);
- The allegation (e.g., abuse of authority, discreditable conduct, neglect of duty, etc.);
- The number of complainants, respondent officers and witness officers involved (if available)[7];
- The disposition of the complaint (e.g., informally resolved, substantiated, or unsubstantiated); and
- The date the file was closed.

The lists will be consolidated into a master file list, ensuring that any complaints that are "missing" from the list provided by the OPCC are included, and duplicates removed.

The master file list will constitute the sampling frame of complaints processed under Part 9 within the review timeframe. The review team will use this list to extract a systematic random sample that is representative of all complaints in the sampling frame.[8]

Based on statistics provided by the OPCC in its 2004 Annual Report, it is estimated that the sampling frame will include approximately 759 complaints.[9] To achieve optimum results, both in terms of reducing sampling error and controlling costs, a random sample size of 261 files will be required. At the review team's discretion, additional files may be purposively selected for inclusion.

All files selected for inclusion in the sample will be examined by the review team, led by Staff Sergeant Deborah Chisholm and a Crown prosecutor (TBD). Staff Sergeant Chisholm brings extensive experience conducting internal investigations as a member of the RCMP Provincial Force, while the Crown prosecutor will add a perspective that is independent of any particular interest.

The review team will develop file coding instruments, which will be used as checklists when reviewing files in the sample. The checklists will assist in assessing compliance with legislative requirements and the completeness of the investigation in each complaint. For example, the checklists will allow the review team member to record whether:

- Prescribed timelines were followed;
- A complaint was properly classified;
- Reasonable efforts were made to gather the necessary evidence to complete the investigation;
- The disposition was appropriate based on the evidence in the complaint file; and
- The adjudicated discipline was imposed.

In addition to reviewing investigation files, the review team will have access to and examine other documentation related to the files, such as departmental memorandums and correspondence.

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[7] This information will assist in determining appropriate sampling methods for interviews with complainants, respondent officers and witness officers.

[8] To ensure that the sample is reflective of the distribution of complaints by department in the sampling frame, the sampling frame will be sorted by department (and thereafter randomized) prior to sampling. A systematic sample with a random start will then be selected. In this case, it is estimated that every third case after the random starting point will be selected.

[9] A total of 759 files were closed during the two-year period 2003-2004. It is anticipated that the total number of files closed during the timeframe for the review (June 15, 2003 - June 14, 2005) will be similar.

Non-lodged complaints

Under Part 9 of the *Police Act*, municipal police departments are not required to maintain records of non-lodged complaints or to file copies of these complaints with the OPCC. Consequently, the review team anticipates considerable variation between departments in the manner in which information about non-lodged complaints is stored.

Each department will be asked to describe its record-keeping procedures respecting non-lodged complaints. The review team will develop sampling methods for each department according to the information available. The non-lodged complaints selected for inclusion in the sample will be reviewed to examine how this avenue of informally resolving complaints has been applied

3.4 INTERVIEWS

Face-to-face interviews will be conducted with key stakeholders in the police complaint process. Sampling methods will vary between respondent groups. For example, all Chief Constables and professional staff of the OPCC will be interviewed. A purposive and/or random sample may be drawn for larger respondent groups, such as complainants, respondent officers and witness officers. Similarly, while individual interviews will be conducted with most respondent groups, a multiple respondent or focus group setting may be appropriate in some cases. Further information regarding the number of complainants, respondent officers and witness officers in the file sample is required to determine appropriate interview sampling methods.

Interview respondent groups will include:

- All professional staff of the **Office of the Police Complaint Commissioner**;
- All **Chief Constables**;
- All **Discipline Authorities** (where other than the Chief Constable);
- Police officers assigned to the **internal investigations function**;
- Representatives of the **BC Federation of Police Officers** and the **Vancouver Police Union**;
- **Police Board** representatives;
- Representatives of **special interest groups**, such as the British Columbia Civil Liberties Association (BCCLA) and Pivot Legal Society;
- A sample of **complainants** from the file sample;[10]
- A sample of **respondent officers** from the file sample; and
- A sample of **witness officers** from the file sample.

Other interested persons and respondent groups identified through the course of the review may be interviewed at the review team's discretion.

The interviews will be semi-structured, consisting mostly of open-ended questions. Building on information obtained during the survey and file review processes, the main foci of the interview questions will be:

- Perceptions of the adequacy and fairness of the current complaint process;
- Perceptions of the integrity of the conduct of police complaint investigations;
- Police understanding of their roles and responsibilities with respect to the complaint process;
- The practices of internal investigations functions in conducting investigations;

---

[10] For reasons of confidentiality, assistance may be required from the OPCC in making initial contact with complainants, respondent officers and witness officers to obtain consent to participate in the interview process.

- Management activities in facilitating the complaint process;
- Satisfaction with experiences with the complaint process (e.g., access, communications, responsiveness, reliability and overall satisfaction); and
- Priorities for improving the complaint process.

In addition, the interview process will provide opportunities to obtain any further information about the complaint investigations included in the file review, which may be required to reach conclusions regarding the investigations.

3.5 OTHER APPROACHES

Other approaches which may be considered for this review include:

- Observation of public hearings ordered by the Police Complaint Commissioner at the request of complainants or respondents,
- Analysis of written submissions from the public and/or key respondent groups.

4 DATA REQUIRED

The following information is required from each independent municipal police department in order to proceed with the review:

- A list (preferably in electronic format) of all sworn personnel, including:
    - Name;
    - Email address;
    - Years of service;
    - Rank;
    - Regular assignment (e.g., General Duty, Youth Squad, Traffic, etc.); and
    - Special assignments, if any (e.g., ERT, Crowd Control, etc.).
- A current copy of the department's organizational chart;
- A list of names and contact information for all Chief Constables, Discipline Authorities and officers assigned to the Internal Investigations function;
- A list of names and contact information for representatives of the police union and the police board;
- A list of all complaint files closed between June 15, 2003 and June 14, 2005, including:
    - The file number;
    - The date the complaint was filed;
    - The type of complaint (e.g., public trust, internal discipline, service or policy or hybrid complaint);
    - The allegation (e.g., abuse of authority, discreditable conduct, neglect of duty, etc.);
    - The number of complainants, respondent officers and witness officers involved (if available);
    - The disposition of the complaint (e.g., informally resolved, substantiated, or unsubstantiated); and
    - The date the complaint was closed.
- A copy of all departmental policies and procedures relating to the complaint process;
- Access to investigation files and related documentation when the review team is on-site.

5 THE REVIEW TEAM

Josiah Wood, Q.C.

Josiah Wood, Q.C., has been retained on contract to lead the review. Mr. Wood is a former Justice of the BC Supreme Court and BC Court of Appeal and is currently a senior partner in the Vancouver law office of Blake, Cassels and Graydon.

Staff Sergeant Deborah Chisholm, RCMP Provincial Force

Currently the Non-Commissioned officer in charge of the Major Crime-Anti-Corruption Unit, Staff Sergeant Chisholm has been seconded to Police Services Division to conduct the file review, examine departmental policies and procedures, participate in interviews as required, and submit conclusions to the chair regarding the integrity of the conduct of police complaint investigations by the municipal police departments included in the sample.

Crown Prosecutor (TBD)

A Crown prosecutor will be retained to assist with the review of complaint files.

Police Services Division Research and Evaluation Unit Staff

Research and Evaluation Unit staff will assist the review in various capacities, particularly with the development, implementation and analysis of the survey, file review and interview processes. Staff members assigned to this project include:

- Lynne McInally, Senior Program Manager
- Jenni Bard, Program Manager
- Tanya Allen, Program Manager
- Christal Engleder, Research Officer

6 TIMELINE

The following list of key tasks provides a tentative timeline for the progress of the review. As the scope and magnitude of the key tasks becomes clearer, this timeline may be extended.

September

- Stakeholder Advisory Committee meeting held
- Analysis of legislation, key documents and literature review underway
- Development of survey, file review and interview tools

October

- Administration of surveys by BC Stats
- Pre-testing of file review and interview tools
- File review process initiated at OPCC and municipal police departments

November

- File review process continued
- Survey analysis reports received from BC Stats

December

- File review process completed

January

- Interview process initiated
- Analysis of file review data

February

- Interview process completed

March

- Analysis of interview data
- Draft report of survey, file review and interview findings prepared

June

- Draft final report prepared

7 FINAL REPORT

The chair's final report will include *inter alia* the following:

- A description of the existing police complaint process (i.e., Part 9 of the Police Act);
- An analysis of the key concerns with the existing process, including but not limited to the findings and recommendations put forward by the Special Committee and the Police Complaint Commissioner;
- A summary and analysis of case law with respect to Part 9 of the Police Act;
- A description and analysis of the police complaint systems in place across Canada and international best practices;
- Consideration of the findings of other components of the review (i.e., surveys, file review and interviews); and
- Recommendations for amending the existing legal framework, developed in consultation with the Director of Police Services.